S. HRG. 100-732

DRUNK DRIVING PREVENTION ACT OF 1988

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2367 and S. 2523

BILLS TO ENCOURAGE STATES TO ESTABLISH MEASURES FOR MORE EFFECTIVE ENFORCEMENT OF LAWS TO PREVENT DRUNK DRIVING

JUNE 29, 1988

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DRUNK DRIVING PREVENTION ACT OF 1988

WEDNESDAY, JUNE 29, 1988

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 12:08 p.m., in room 406, Dirksen Senate Office Building.

Present: Senators Reid, Lautenberg, Chafee, and Burdick.

Senator REID. Chairman Burdick has been delayed, and he has asked me to get the hearing started.

Our first panel will be Mr. Marshall Jacks, Jr., Associate Administrator for Safety and Operations, Federal Highway, Administration, and Mr. George Reagle, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration.

Mr. Jacks?

Mr. JACKS. Mr. Reagle will make the statement, sir.

Senator REID. Pardon me?

Mr. JACKS. Mr. Reagle will make the statement for the Department, sir.

Senator REID. Fine.

STATEMENT OF GEORGE REAGLE, ASSOCIATE ADMINISTRATOR FOR TRAFFIC SAFETY PROGRAMS, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Mr. REAGLE. Good morning, Mr. Chairman. It's a pleasure to be here. Also on our panel this morning, to my left, is Dr. James Nichols from our Alcohol Office.

At your request, I will address the legislation introduced by Senator Lautenberg, and cosponsored by Senator Danforth and others, to establish a new incentive grant program to help reduce drunk driving, and the legislation introduced by yourself, with Senator Lautenberg's cosponsorship, to impose sanctions on States that do you adopt certain drunk driving control measures. To establish a context for our views on these bills, I will first give you a status report on the national effort to reduce the effects of drinking and driving.

The preliminary data for 1987 indicates that the downward trend in alcohol-related fatal crashes has continued, although at a slower rate. The proportion of fatalities involving alcohol intoxication fell to 40 percent, down from 41 percent in 1986 and 46 percent in 1982. By 1986, the latest year for which we have complete data, the proportion of drivers involved in fatal crashes who were legally intoxicated had dropped by 14 percent from the 1982 level.

Over this same period of time the most significant improvement occurred in the proportion of teenage drivers in fatal crashes who were legally intoxicated. This proportion dropped by 26 percent. Based on the agency's estimates for the effectiveness of minimum drinking age laws, our preliminary estimate is that these laws saved the lives of over a thousand people in 1987 and have saved some 4,400 lives since the drinking age laws began to be raised in 1982.

Another Federal law which came into effect during this period is section 408. Under section 408, a State becomes eligible for a basic grant by adopting four measures: prompt suspension of licenses for a period of not less than 90 days, 30 of which must be absolute suspension, for the first offense and one year for repeat offenders; mandatory confinement or community service for a second conviction within five years; establishment of a blood alcohol content of 0.10 percent as a per se violation; and increased enforcement and education efforts.

We agree that these are important elements of comprehensive, effective programs to combat impaired driving, and we have strongly supported their adoption and implementation at the State level. The efforts by the States to meet these section 408 criteria, along with other on-going efforts to review and improve alcohol countermeasures, have contributed substantially to the inroads we have begun to make in reducing the problem of impaired driving.

States that have improved their programs to the point of qualifying for section 408 Alcohol Incentive Grants have made more progress, as a group, in reducing the proportion of their intoxicated-driver fatalities than States that have not qualified for these funds. Most of the States qualifying for the basic section 408 grants have also qualified for supplemental grants.

All in all, the section 408 program has helped to stimulate a number of effective measures to reduce drunk driving and has thus made a useful contribution to the comprehensive attack on the drunk driving problem. It also represents a move away from the use of sanctions to ensure long-term and systemic State action, a move we strongly support.

It is also important to recognize that other States have made commendable progress in addressing the menace of drunk driving, even if they have not met all of section 408 criteria. New York State's "Stop DWI" program, for example, established financially self-sufficient local programs around the State to combat drunk driving, along with stronger penalties for those convicted of the offense.

Having said all this, Mr. Chairman, I must now tell you we do not support the enactment of either S. 2367 or S. 2523. I will address S. 2367 first. While this bill is, in several respects, similar to the section 408 program, it appears to duplicate parts of the section 408 program and is less flexible. Individually, most of the concepts behind the bill have merit, and some have already been adopted as part of States' response to section 408. We strongly encourage the States to adopt administrative systems for license suspensions and to develop self-sufficient funding mechanisms for their programs. It is our view, however, that the bill may accomplish little that is not already accomplished by section 408. It will not help the majority

of States who do not already have the capacity to quickly process suspensions and revocations.

Let me illustrate these points by focusing on the principal elements: The criterion for administrative suspension and revocation of licenses. Under this bill, a State would become eligible for a basic grant by adopting an enforcement program in which the arresting officer would have authority to take an offenders license on the spot and issue a notice of license suspension or revocation. Although the suspension or revocation could consequently be determined by a judge, in all likelihood it will be made instead by an administrative hearing officer. This program thus incorporates a system of administrative revocation which has been widely accepted as an effective means of reducing drunk driving.

We believe the administrative system is a good one and we have strongly encouraged its adoption by all States, but we do not believe that S. 2367 will induce additional States to adopt such a system. Those States which have sought section 408 grants have generally found that they could not meet the prompt suspension criterion, which we defined as 45 days or 90 days if the State has a plan to move to 45 days, unless they adopted an administrative system. Along with the related criteria that the suspension be absolute for the first 30 days, with no hardship exemptions, the prompt suspension criteria has been a significant barrier to additional States qualifying for section 408.

This brings us to the first problem with S. 2367: the bill would require a final action on suspension or revocation to occur within 15 days, far less than the period specified under the existing section 408 criteria. Also, we believe that measures for dealing with multiple offenders, such as those in section 408, are essential to any balanced program. Also, a revocation or suspension within 45 days, and a requirement that at least 30 of the days of the suspension be hard, create the general deterrent effect which the prompt suspension criteria was intended to achieve.

I have already suggested our second concern with S. 2367: its narrow scope. We do not question the effectiveness of administrative revocations, but we believe that to be effective an alcohol program must have several integrated components.

Senator LAUTENBERG [presiding]. Mr. Reagle, sorry to have to cut you off, but we got a bad start and we'll——

Mr. REAGLE. That's okay, Mr. Chairman.

Senator LAUTENBERG [continuing]. Make it worse if we run over time. We will take the full statement for the record. We thank you very much.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. At this point, I thank my colleague, Senator Reid, for starting this hearing. Senator Burdick could not be with us, though he is fully supportive of this hearing, and just briefly I would ask you to wait while Senator Reid and I do make some opening statements.

Once again, I apologize to everyone here. We had a busy morning on the Floor and unfortunately we couldn't start as planned.

The issue, as everyone knows, is a very important one, one that demands our attention. On a road somewhere in the United States within the last 22 minutes, someone died in an alcohol-related crash. As this committee hears testimony, five more lives will be lost to drunk driving in the next two hours.

And that's why we're here, because every 22 minutes there's a drunk driving death; because 24,000 lives, both young and old, are lost each year to drunk drivers; because we have to do whatever we can to put an end to this. And it's time to put the brakes on drunk driving.

The bills being considered by this committee today would help us in our fight against drunk drivers. Their adoption would help reduce fatalities by getting the drunk driver off the road. The legislation would also help make sure our cities and towns have the resources dedicated to the task. We want the States to adopt laws that have been shown to work, laws that allow police officers to take a drunk driver's license at the scene of the arrest, that establish steady funding sources for drunk driving enforcement, laws that would help keep teenagers from drinking and driving.

Some may raise concerns, as we've heard, that my bill, S. 2367, authorizes new spending. How do we put a price on a life? If we can save 2,000 lives by spending $10 or $20 million in seed money, the question is, is that too much? This Senator doesn't think so. We're talking about laws that we know work. So what we're really asking is, are we willing, in this case, to invest Federal dollars to help save lives? It's apparent that we spend billions in trying to save lives that don't always have the effect that we expect this law to have.

Clearly, we shouldn't throw money to the States and hope that we'll get results. Rather, we can use money already sitting in the Highway Trust Fund to help States get effective drunk driving laws on the books. For those who might not want to spend more money, there's an alternative. And that is, S. 2523, which I joined with my colleague, Senator Reid, in introducing. This bill would impose sanctions against States that don't adopt tougher more effective laws.

Sanctions have proven to be effective before, and I supported them. In this case, I'd like to try to use the carrot first, and then the stick. But if the incentives aren't enough, let's impose sanctions. One way or the other we want to get to the same goal, and that is, to save lives by getting the drunk driver off the road.

We've made significant progress against drunk driving in recent years. And as I look around the room, I see colleagues from previous battles, like the battle to pass the 21-year-old drinking age law. That law is now in place, and it works. And it's expected that it will prevent 1,000 young people from losing their lives on the highway. That's one thousand friends and families a year that don't have to mourn a loss because a kid was on the road after drinking too much. Well, it's something that we're all proud of, but we can't let it end there.

The bills before us today would take another major step against drunk driving. And as we've already heard from Mr. Reagle, we're going to hear from other people as well, who deal with drunk driving from different points of view. Their aim is, I'm sure, the same.

And that is to prevent needless tragic deaths on our highways. And I look forward to reviewing their testimony, and then to prompt action on this important legislation.

And I would ask Senator Reid for his opening statement. And we welcome Senator Chafee to this hearing.

OPENING STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Thank you, Mr. Lautenberg.

I certainly compliment and applaud you for your leadership in this area. There is no question that drunk driving is a national problem, and it needs a national solution.

The committee has before it two approaches. One creates incentives, the other threatens sanctions. In effect, the carrot and the stick. Whenever we consider sanctions, there are those who argue that such coercion violates the principal of States' rights. I consider myself representing a State that has been proud of its long history of protecting its own rights. I consider myself a strong protector and an advocate of States' rights. But I also believe that Congress was created to deal with national problems. Drunk driving is a national problem.

We've heard time and time again that every 20 minutes, approximately, a person is killed in this country as a result of an alcohol-related accident. It's a national problem. Last year over approximately 24,000 people died as a result of alcohol-related accidents. Clearly, drunk driving is a plague. We know that 58,000 people died in the Vietnam conflict, but in that same period of time over five times as many people died as a result of alcohol-related accidents. Drunk driving is a national problem.

Traffic accidents are the greatest single cause of death for people between the ages of 5 and 34, and more than half of these fatalities are caused by drunk drivers. Statistics indicate that two out of every five Americans will be involved in an alcohol-related accident sometime during their life. Drunk driving is a national problem.

History has demonstrated that the threat of sanctions work. In 1984, Congress voted to withhold Federal highway funds from States that did not enact a minimum drinking age of 21. People at that time said much as we've heard from our first witness here today, States can't do it, they can't meet the deadlines. But they did. And now 21 is the national drinking age, and as well it should be.

There are other examples, other examples that certainly have shown the effectiveness of sanctions. A week ago last Thursday, Senator Lautenberg and I introduced a bill that proposed a national solution to a national problem. The bill proposes a strong deterrent against drunk driving, prompt administrative revocation of drunk drivers' licenses. Not on a State-by-State basis, nationally.

It's an established principal of criminal law that effective punishment must be certain, not severe. And this bill takes into effect the certainty of punishment. That's important. Third, the operation of enforcement is expedited; fourth, law enforcement morale rises

with real results; and last, the judicial system is relieved of some of the burden of enforcement.

I speak with experience in this regard. One of the first jobs I had after graduating from law school, was being a prosecutor. And one of the groups that were prosecuted more than any other group was drunk drivers. We were burdened with work. People would come to us and they would say, he's never been in trouble before, and we had 35 other cases and we would do some plea bargaining and work things out. Wouldn't it be interesting, though—and I've spoken to Mr. Reagle about this—wouldn't it be interesting if we had a data bank where we could find out if that person had been arrested other places, in other jurisdictions, for driving under the influence? It would allow the prosecution of drunk driving cases to flow much more freely, and to do it with some degree of certainty.

In addition, S. 2523 induces the States to establish a per se illegal blood alcohol content of 0.10. Mr. Chairman, I'm interested in what testimony we'll get today, maybe 0.10 is too low, perhaps it should be 0.08 instead of 0.10. That's something I'm going to look at.

The bill also induces States to require testing where traffic accidents cause death or serious injury, and to forfeit registration of license plates of those convicted of repeat offenses. These measures would give us a clearer picture of the extent of the problem and to help take action against repeat offenders who cause so much problem.

Mr. Chairman, the reason I got interested in this—I've been kind of interested in it most of my adult life, but I really got interested when I read, time after time, of those young people in Kentucky who were slaughtered by a drunk driver, with a hat that said, drink hard, die tough, or something like that. A man that had been previously convicted of driving under the influence, and here he is out slaughtering 27 people in a school bus. We should not allow people like that to be on the roads. And that's what this legislation that you and I are sponsoring would do away with.

We must send a strong message to drunk drivers. We must ensure that drunk drivers all over the Nation know that drunk driving is a crime and that they'll be treated like criminals, that's what they are, and that they'll be punished to the full extent of the law.

Thank you, Mr. Chairman, for allowing me to issue my statement.

Senator LAUTENBERG. Thank you very much, Senator Reid.

Senator Chafee, do you have an opening statement?

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Mr. Chairman, I'll put it in the record, and I do want to commend you for your leadership in this. It's extremely important.

There's one point I'd like to make, and this echoes what Senator Reid was saying. It isn't that these drunk drivers are killing themselves, they're killing other people. And that is the tragedy of all this. If they were just smashing themselves into a tree, well, it's not good, but you could say they did it to themselves. But what

they're doing is they're killing other people, innocent people. And it's happening time and time again, just terrible tragedies. And all too often the drunk driver, he's strapped in the driver's seat and survives. But the poor souls in the other car, or the innocent people walking along the sidewalk, are the ones that have the terrible injuries inflicted upon them, or death.

So I support this legislation and want to commend you for it, and I have a statement I'd like to put in the record.

Senator LAUTENBERG. Without objection.

[Senator Chafee's statement follows:]

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Mr. Chairman, alcohol abuse has become an increasing problem in this country. The costs of this abuse are clearly magnified on our roads and highways. When operators of cars, trucks or buses drink and drive, they endanger not only their own lives, but the lives of passengers entrusted to their care, other motorists and even innocent bystanders. Too often, I pick up the newspaper and read about the suffering caused by drunk drivers: the tremendous loss of human potential, the promising lives cut short, and the families torn apart by senseless tragedy.

Drunk driving is responsible for the deaths of 23,000 people annually, or one person every 22 minutes. Numbers alone, however—even numbers of this magnitude—do not begin to tell the story of the suffering and loss caused by drunk driving every day. That is why we need to take effective action now. Mothers Against Drunk Driving (MADD), a group born out of personal experience, is an extraordinary example of what ordinary citizens can do if they care to act. In the last several years, MADD has been one of the most important and effective forces in the twin fights to raise consciousness about drunk driving and to reduce the number of alcohol-related accidents on our streets and highways.

It is important to remember that the incidence of drunk driving crosses all age groups and economic backgrounds. An estimated 560,000 people are injured in alcohol-related crashes each year. That is why I joined with my colleague Senator Pell and ninety-seven other Senators this year in urging Surgeon General C. Everett Koop to declare drunk driving a "national crisis." We must bring every federal effort possible to bear on this problem.

As you know, Mr. Chairman, the federal government currently provides incentive grants for alcohol safety programs. The so called Section 408 program which includes both basic and supplemental grants has been a major success in my home state of Rhode Island and has made possible several worthwhile programs to combat drunk driving. The key to the success of the 408 program is cooperation.

The bill I cosponsor with Senator Lautenberg and Senator Danforth, S. 2367, the Drunk Driving Prevention Act of 1988, would build upon the 408 program. It authorizes federal seed money for the establishment of additional self-supporting drunk driving prevention programs. In order to be eligible for a grant, states would have to establish programs under which fines and surcharges collected from those convicted of drunk driving would be returned to communities for enforcement. The emphasis here is to develop programs that can become self-sufficient.

In order to qualify for funding, states would also be required to adopt laws for the prompt suspension or revocation of the license of a driver found to be under the influence of alcohol. This second provision is essential to deter people from driving while under the influence of alcohol. Drunk drivers must know that they will be prosecuted and that their licenses will be revoked in a timely fashion.

In addition, under this legislation, states would be eligible for supplemental grants if: first, law enforcement officers are required to test for blood alcohol content whenever they have probable cause to believe that a driver involved in a collision resulting in a fatality or serious injury, had committed an alcohol-related traffic offense; and second, there is established an effective system for preventing drivers under age 21 from obtaining alcoholic beverages. It is time to get tough with drunk drivers and support a uniform response to alcohol-related accidents.

The purpose of this legislation is to encourage states to adopt laws that have proven to be highly effective in reducing alcohol-related fatalities. Despite the past successes of federal and state efforts to combat drug and alcohol abuse, the fight against drunk driving on our roads and highways is far from over. We must do all

we can to further the perception and the reality that drunk drivers will be apprehended and punished.

I urge my colleagues to support S. 2367 as a major repsonse to the incidence of drunk driving on our highways. It is a positive step in the federal government's continuing efforts to make this nation's roadways safe. It is certainly not the final word on preventive drinking and driving. We must do more to educate the public through the media as to the dangers of drunk driving and to publicize the state efforts to combat drinking and driving. Together with the help of the states and organizations such as MADD we can make a difference.

Senator REID. Would the Senator yield?

Senator CHAFEE. Sure.

Senator REID. We're not here talking about hypothetical cases. What the Senator from Rhode Island says, happens.

Senator CHAFEE. Yes, just a few days ago a mother was holding her 10-year-old child by the hand while waiting for the school bus, and the child was killed right there. What more ghastly accident could you envision?

Senator LAUTENBERG. We know what our job is.

I would just mention that we're going to keep the record open for 30 days in the event that members may want to submit questions, and we would ask all the witnesses to respond as promptly and as fully as you can to the written questions.

We're going to try to reduce the time factor here, as much as we can. We've delayed everybody, and we have a lot of ground to cover.

I would first, Mr. Reagle, thank you for your testimony. I have a few questions that I will try to ask as briefly as possible and hope the answers will be the same.

What kind of a drunk driving poses the greatest threat, the social drinker or the chronic drinker?

Mr. REAGLE. The problem drinker by far. And I think if you looked at a hundred percent, of drinking drivers, approximately 80 percent would be the problem drinkers and 20 percent would be social drinkers.

Senator LAUTENBERG. Wouldn't the threat of instant license revocation, or suspension, have a substantial impact on this type driver?

Mr. REAGLE. Absolutely, sir.

I think the other point that I would want to make, though, is that the penalty should be not only swift but sure—sure in the sense that, as you know in 408 it requires 30 days of hard suspension, where there is no license issued whatsoever. So I think that's very important, not only swift, but sure.

Senator LAUTENBERG. How about roadside testing, breathalyzers, are they effective, are there problems with their accuracy?

Mr. REAGLE. We do testing at the Transportation Safety Center in Boston, and we have found no problems with those kinds of devices.

Senator LAUTENBERG. Has on-site suspension of licenses, based on these tests stood scrutiny in the courts?

Mr. REAGLE. To the best of my knowledge, yes.

Senator LAUTENBERG. Senator Reid, do you have any questions?

Senator REID. I'll just make a brief statement.

Mr. Reagle, as I've indicated earlier, I appreciate the time that you have spent in order for me to get a better perspective of this.

And if I had a message for you to take back, as a representative of the Administration, it is the fact that the President has supported sanctions in the past. In fact, as I understand it, he supported sanctions relative to the 21-year-old drinking age. And that's worked well.

So as I read your statement, there are some concerns I have. That is, that we should give the States a little more time to come around. And I disagree. I think that we have to move on this. I think it's become a national menace. It's a plague, as I have said. And I think that we have to work together, recognizing that this is a national problem and there must be a national solution. I think that instead of doing less, I think we have to do more.

The bills that are before us are just a small part of some of the things that need to be done. And one of the things I'm going to work with you and the Administration on is to try to create a national data bank, as I mentioned, so that if someone that's been arrested in Louisiana goes to Nevada, rents a car, and is picked up for driving under the influence, the data bank would show that he was arrested twice in Louisiana for driving under the influence, that information might help decide how he should be treated at the time that he's arrested in Nevada.

So I appreciate your cooperation and look forward to working with you.

Mr. REAGLE. We would be pleased to work with you on that, Senator.

Senator LAUTENBERG. Senator Chafee?

Senator CHAFEE. Mr. Chairman, a couple of quick questions.

Has there ever been tried a suspension of one's license, a revocation, whatever you want to call it, except for the person going to and from work? In other words, it's been determined constitutionally in many States, I think in our State, that an automobile license is an essential factor in one's life in order to go back and forth to work.

So you suspend some person's license and then the person's out of a job, or can't go to work.

Mr. REAGLE. That's not necessarily true, Senator.

If I might add.

Senator CHAFEE. Yes.

Mr. REAGLE. We've done studies in Mississippi and Delaware to see if in fact the loss of license is related to loss of job, and we've found that loss of license does not lead to loss of job, except in very few circumstances.

Senator CHAFEE. Isn't that interesting.

Mr. REAGLE. Yes, sir, in those two States.

Senator REID. Senator Chafee, if you would yield?

In my experience and research, I have found that when temporary licenses are issued, some tremendous abuse can take place.

Mr. REAGLE. Well, the point I was trying to make is that not only do you want to take the license quickly, but you want to make certain that there is a period of time when that person cannot drive under any circumstances. I think that's very important.

Senator CHAFEE. I notice in one of these bills there is a suggestion that you take the plates too.

Mr. REAGLE. Yes, sir.

Senator CHAFEE. It seems to me that is extremely effective. Seeing somebody drive, you don't know whether they've got their license or not, but if they don't have plates, you can certainly pick them up.

Mr. REAGLE. That's modeled after a law that just passed in Minnesota. And we're beginning an evaluation of that, and at an appropriate point in time we'd like to see how effective it is. But it certainly appears to be innovative.

Senator CHAFEE. Okay.

Now, my final question is the constitutionality of road blocks.

Mr. REAGLE. Yes, sir.

Senator CHAFEE. How does that stand? Is that, again, determined by States?

Mr. REAGLE. It's determined primarily by States. At least 18 State Courts (appellate or higher) have upheld the constitutionality of roadblocks, but a small number (9) have found problems with them, relating primarily to specific methods for conducting them. And I can give you additional information, regarding which States have upheld the constitutionality of such procedures.

Senator CHAFEE. Okay.

Do you think they're effective?

Mr. REAGLE. I think they are if they're part of a comprehensive enforcement program. In other words, I would not want to see DWI enforcement be strictly sobriety checkpoints. But if it's integrated into an effective enforcement program, yes. Because what it does is push the issue we're trying to push, which is general deterrence.

Senator CHAFEE. A final, one quick question.

These breathalyzers, do they have a readout mechanism, in other words you can see it right there, or is there some follow-up lab test that has to go with it?

Mr. REAGLE. No, no, they have a readout.

Senator CHAFEE. There's a readout?

Mr. REAGLE. This is Dr. Nichols.

Dr. NICHOLS. Yes, there are two preliminary breath test devices that are actually on the qualified products list as evidential devices themselves.

Senator CHAFEE. And you can read it right out?

Dr. NICHOLS. Yes. Some read out in three digits, some read out in two digits, and you can ask for one that just reads in terms of lights of different colors, but they have the sensitivity of an evidential device.

Senator CHAFEE. Thank you very much.

Thank you, Mr. Chairman.

Senator LAUTENBERG. Thank you very much, Senator Chafee.

Senator Burdick, did you have any questions or statements that you wanted to make at this point, before we call up the next panel? We'll be calling up Mr. Spier after this.

OPENING STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator BURDICK. Thank you, Mr. Chairman.

I'll not read my statement in the interest of time. I just wanted to say that I commend you and Senator Reid for introducing this

legislation, and I ask that my statement be made a part of the record at this point.

Senator LAUTENBERG. Without objection, your statement and a statement from Senator Stafford will be inserted into the record.

[The statements referred to follow:]

OPENING STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Today the Committee on Environment and Public Works begins consideration of S. 2367, introduced by Senator Lautenberg, and S. 2523, co-sponsored by Senators Reid and Lautenberg. These bills both offer new measures to help address the serious problem of drunk driving.

Over the past decade, a quarter of a million people have been killed in alcohol-related crashes. Each year more than half of all highway fatalities in this country involve drunk drivers. Such drivers are responsible for approximately 660,000 motor vehicle crashes annually that result in over 20,000 deaths and 650,000 injuries. The economic cost of drunk driving is estimated at $12 billion. Clearly, drunk driving continues to be a major highway safety concern.

Starting in 1970, the Federal government began to take a sustained interest in alcohol traffic safety programs. Legislation was recently enacted, again sponsored by Senator Lautenberg, to set the national minimum drinking age at 21 years. States have been active too, passing over 500 new laws to tighten enforcement. National awareness of the problem is keener, and statistics show improvements.

The legislation before us today seeks to induce States to enact tougher drunk driving laws. S. 2367 offers incentives to States through new Federal-aid highway grants, while S. 2523 calls for withholding Federal-aid highway funds if such laws are not passed.

Members of the Environment and Public Works Committee have a long-term interest in drunk driving issues. Among the measures referred to this Committee have been the minimum drinking age act, which I was pleased to co-sponsor; legislation making that law permanent; and a bill to improve the safe operation of commercial motor vehicles by cracking down on intoxicated truck and bus drivers. That legislation has all been enacted in one form or another.

Since policy is increasingly controlled by budgetary concerns, we must recognize that because of Gramm-Rudman there is a limit on the total amount of funding available for Federal-aid highway programs from the Highway Trust Fund. Funding for the new proposals in S. 2367 would be provided from the Trust Fund; this would be new money in the amount of $25 million for fiscal year 1989 and $50 million per year for fiscal years 1990 and 1991. Under Gramm-Rudman spending limitations, the costs of a new alcohol traffic safety program will have to be offset by reduced spending in the States' highway construction accounts. Similarly, the proposed sanctions in S. 2523 could, if imposed, lead to a reduction in highway construction spending.

It is important as we focus on the problem of drunk driving to also consider: (1) the source of funding for a new program at a time when highway and bridge needs far outpace available revenues; and (2) the merits of program incentives vs. sanctions. The integrity and effectiveness of one highway program must not be compromised on order to improve another. To achieve a net gain in safety, we cannot simply transfer funding for safer roadways to an alcohol traffic safety program, and assume we have made progress.

Our witnesses today include safety experts from Federal and State governments, law enforcement agencies, and other experts in the field of highway safety. I am especially pleased that Mr. Eden Spier of the North Dakota State Highway Department will testify before the Committee today. North Dakota, I am proud to say, is one of 17 States to have qualified so far for the Section 408 Alcohol Incentive Grant Program.

We will also be receiving testimony from individuals who have been directly affected by the actions of drunk drivers; their testimony will remind us of the tragic and senseless losses experienced by far too many families.

I think it is especially timely to hold this hearing as we begin the Fourth of July weekend when so many will be travelling on our nation's highways. I am confident that today's testimony will enable us to better understand the drunk driving problem and effectiveness countermeasures. I want to express my appreciation to all our witnesses for participating in this important, full Committee hearing.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Mr. Chairman, I am very pleased to participate in the hearing today to consider legislation which has been introduced by Senator Lautenberg and Senator Reid. The purpose of this legislation is to further reduce drunk driving on our nation's highways. and I believe that is a goal which must be achieved.

In 1986, according to statistics collected by the National Highway Traffic Safety Administration, 52.1 percent of the fatalities on our highways were alcohol-related. That means that 23,990 people lost their lives in 1986 because of the combination of drinking and driving.

Crashes involving motor vehicles cost our citizens over $74 billion in 1986. If even half of that is attributed to alcohol-related crashes, the economic costs of drunk driving are staggering. Even higher than the economic cost, however, is the suffering connected with the injury or death of a friend or member of one's family.

The Federal government has recognized its role and responsibility in addressing the problem of drinking and driving as another way to make our highways safer. The Senator from New Jersey deserves much of the credit for initiating Federal programs that have helped the States implement effective education, enforcement and deterrent programs which have significantly reduced alcohol-related crashes, deaths and injuries. The statistics bear this out. Since 1982, after which much of the Federal legislation was enacted, the percentage of alcohol-related fatalities has continued to drop. Clearly the efforts at the Federal, State and local level have had a positive effect.

Finally, I would like to pay tribute to the ordinary citizens who are really extraordinary in their commitment to saving lives by keeping drunk drivers off our highways. Individuals have made a difference in educating their local communities, organizing people across the country, and getting effective laws in place at the State and Federal level which have saved many of us from the tragedies they have experienced.

It is a national tragedy that over 45,000 people lose their lives on our highways every year. We must continue to make every effort to find ways to reduce the deaths and injuries occurring every day. I want to join in welcoming our witnesses, and I look forward to hearing their suggestions on how we can do a better job.

Senator LAUTENBERG. Mr. Reagle, before we let you go, it's my understanding that the Administration has no problems with administrative suspension of the license?

Mr. REAGLE. No, sir. We've found them to be very effective.

Senator LAUTENBERG. Okay.

So, we may disagree as to process, or program to get at the drunk driver, but in terms of objective, in terms of the single, perhaps, most effective tool of the legislation that sits before us, now, is to get that license out of that person's hands the minute——

Mr. REAGLE. We would agree to that.

Senator LAUTENBERG [continuing]. The minute they are caught?

Mr. REAGLE. Yes.

Senator LAUTENBERG. Okay.

Thanks very much, Mr. Reagle, and your colleagues, we appreciate your being with us. Sorry that we weren't able to spend more time with you.

I'd now like to call the second panel, which would be Mr. Fiedler and Mr. Spier. And then, because of a problem of time for Ms. Phillips, the President of Mothers Against Drunk Driving, we'll call that panel third instead of fourth, we would hope that the others will indulge us.

I would call on Chairman Burdick of the Environment and Public Works Committee, first.

Senator BURDICK. Thank you, Mr. Chairman.

I'd like to give a special welcome to Mr. Elden G. Spier, Director of the Drivers License and Traffic Safety Division, North Dakota State Highway Department. Welcome to the committee.

I understand that you have done considerable work in this area, and that as a result of your efforts, the traffic hazards and fatalities have been greatly reduced in the great State of North Dakota. I hope you'll touch upon that record a bit when you give your testimony.

Senator LAUTENBERG. Thank you very much, Chairman Burdick. Mr. Spier, please recognize that a welcome from the Chairman of this committee, the distinguished United States Senator, as someone who has served his State and his Country extremely well, Senator Burdick, and a good friend of ours, a welcome from him indicates the importance that this committee places on your testimony. We're happy to have you here, and we thank Senator Burdick, who has a busy day, for permitting us to continue this hearing, even though he's not able to stay. We have his, as you heard, total endorsement for legislation that gets the drunk driver off the road. We thank him very much.

Senator BURDICK. For those of you who don't know, this is a role reversal. Usually this is Senator Burdick's chair, and I'm the one over there pleading with the Chairman for an opportunity to make my statement.

Senator REID. And I'm the one way over there.

Senator LAUTENBERG. Again, in the interest of time what we're going to do is we would ask you, if you can, to just make a very brief summary statement. Your full statement will be in the record of this hearing which will be a permanent part of the total information that's developed in helping us get the kind of law that each of you, I know, supports. Then we'll get right to questions.

So I would ask you, Mr. Fielding, and don't feel neglected because of the warm welcome that Mr. Spier has gotten, but he's from North Dakota, and so is the Chairman, and that makes a difference. We don't have anyone from Wisconsin here, but we do welcome you and we'd ask, again, if you have just a couple minutes worth of opening comments, we'd take them. Again, your statement will be part of the record.

Mr. Fiedler?

STATEMENT OF RONALD R. FIEDLER, CHAIRMAN, STANDING COMMITTEE ON HIGHWAY TRAFFIC SAFETY, AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS, AND SECRETARY, WISCONSIN DEPARTMENT OF TRANSPORTATION

Mr. FIEDLER. Thank you, Mr. Chairman. My name is Ronald Fiedler. I'm the Secretary of the Wisconsin Department of Transportation. I'm also the designated Governor's Highway Safety Representative from our State. I'm here on behalf of AASHTO, the American Association of State Highway and Transportation Officials, and testifying on their behalf. I'm Chairman of the Standing Committee in AASHTO of the Highway Safety Committee.

Let me say that we certainly do endorse the intent of the legislation that's being considered here today. I think getting the drunks

off the road is very, very important. We have approximately 40,000 annual traffic deaths, and according to our records about half, or approximately half of those are caused by drunk drivers. So the intent of what your proposing to do we certainly do support from AASHTO's perspective.

As you know, most of our members, or all of our members of AASHTO are very much involved in the highway environment. We look at developing a safe highway facility by having wider shoulders, better beam guards to protect the driver, but we know that's only a part of the problem. We know that getting the drunks off the road is a very significant contribution to the fatal accident rates of this Country.

We do also know that we need to take positive action in order to reduce the accident rate, because traffic volumes are going up. They're predicting to go up more. So it is important that we take whatever actions we can and getting the drunks off the road is certainly one of those actions that we think is important.

Let me get to the heart of my testimony if I may, and the principal reason that I'm here is to basically look at the two bills. One looks at the incentive program, the other looks at the sanction program. And let me read from the by-laws of our AASHTO laws, which speak to this issue. And that's Elimination of Sanctions, under H50, "Incentives should be developed where needed to encourage States to comply with Federal policies, and Federal sanctions should be eliminated or reduced in number."

And we think this policy accurately expresses our view in respect to these two bills. For sanctions, very frankly, are frequently counterproductive. In other words, if you withhold the highway funds that come in, then we cannot increase the safe environment of the highway system if we don't have those funds to do it. And I think from a total safety standpoint, we do want to continue that effort. Sometimes they're poorly targeted. Sanctions go against the State, and perhaps against the law enforcement agencies, or whatever. And they do not target the highway. In other words, they don't have an effect on us, and we can't control that. But they do affect the ability for us to build safe highway facilities.

And at times, I think you'll find that sanctions really go to program distortions. People don't respond very well, even—it's difficult in some extreme cases to have sanctions effective.

So we would like, as you mentioned earlier, the carrot and the stick approach. We certainly support the carrot approach, the incentive approach. And do not support the sanctions.

So that's very briefly where we're coming from. Again, let me just summarize and say that we do support the intent of this bill. Let's get the drunks off the road.

Senator LAUTENBERG. Thank you very much for the brevity, and the directness.

Mr. Spier, we invite you, again, to summarize as much as you can because keeping in mind your full statement is going to be in the record.

STATEMENT OF ELDEN SPIER, DIRECTOR, DRIVERS LICENSE AND TRAFFIC SAFETY DIVISION, NORTH DAKOTA HIGHWAY DEPARTMENT

Mr. SPIER. Thank you, Mr. Chairman. My name is Elden G. Spier, the Director of Driver License and Traffic Safety Division of the North Dakota State Highway Department.

My testimony will point out some possible trouble spots for States striving to meet these standards.

We totally agree that anyone who is tested and is found to have been under the influence of alcohol while operating a motor vehicle should lose his driver's license on the spot. We have had the administrative suspension process in North Dakota for five years. It works extremely well in taking drunk drivers off the highway. Statistics prove that these license suspensions have a strong deterrent effect on DUI drivers. During the first year of the stricter penalties, 5,293 people were suspended. In the second year, 4,633, and a decline to 2,906 in the third year, a 45 percent decrease in a three-year period. So the process does work.

We agree with the 90-day suspension for the first offender, the one-year suspension for the repeat offender. We would even go further to say anyone who refuses to take an alcohol test, even on the first offense should have a revocation of one year.

I think the statistics that I've given you support that the administrative procedure works. But we also agree that the incentive proposal in Senate 2367 offers, rather than a sanction base approach, as in 2523. Federal sanctions take money away from projects which are in place and doing a good job. Sanctions are ineffective in solving problems.

I'd like to point out a couple of areas that I think should be addressed. And that relates itself to the 15-day time period in which to suspend the license. In the five years that we've been working at this program, we find that the 15 days is too short. Even the mail service doesn't act fast enough. So we would recommend that you at least go to a 25-day period, or even have the criteria that the license should be suspended within an average of 25 days. That will give you some variance. Because it has worked for us. Our average is 25 days that the suspension actually takes place.

We have some problem in, where you make reference to self-sufficient. We wholeheartedly believe in that. The problem, as the bill defines it, indicates where the fines, or an additional amount to the fine. I think our State and a number of others, the constitution identifies where the fines go. And that is to the school system. So we would hope that you would broaden a little bit, to allow the States authority to place an additional amount in some way so that it could be allocated back to the communities, so you wouldn't have to change your constitution in order to allow this to happen.

Again, I think the final part was that the bill requires a study by the National Academy of Sciences. We would hope that the time frames that are established would take into consideration the periods during which States can pass legislation. So, if the time frame was too short States couldn't comply.

Again, we wholeheartedly support, prefer the carrot instead of the stick.

Thank you.

Senator LAUTENBERG. Thank you very much, Mr. Spier, and Mr. Fiedler.

Just a couple of quick questions. Generally speaking, do you think we're doing enough at the Federal, State, local levels to deal with the problem of drunk driving?

Mr. FIEDLER. We, in Wisconsin, just passed the administrative suspension license for drunk driving as of the first of the year. And we think it's been pretty effective. Let me just give you some of our statistics on that basis.

The arrests have been down 10 to 12 percent since the first of the year. At this point we can't tell whether that means fewer people are driving, or fewer accidents are being made. But the arrests are down for drunk driving, and we hope that we have less drunks on the road. With those that we are making administrative suspension of license, only seven percent of those have been overturned by the courts after we have made the suspension. So that, we think, is also effective and has been supported by the court system.

So we're pleased with the initial off and running of the OWI administrative suspensions. And we think that we're going in the right direction, and we certainly are supportive of what we're doing, of course, in the State of Wisconsin—and I speak now as a Secretary of the Department of Transportation in Wisconsin—and am supportive of the intent of what you're trying to do here today.

Senator LAUTENBERG. Do you think that the Federal Government is being helpful enough, at this point, with the effectiveness of the programs that are underway, to help you fight the battle against the drunk driver?

Mr. SPIER. Yes. I think the additional incentive grants have been working very well.

In North Dakota, we have started working with the communities and we're providing funding and such to help the communities start programs on their own. Because they can be the most effective, that is the grassroots, and it's not always a Federal problem or a State problem. And the locals can do more good, however, they need additional resources in order to do it.

Senator LAUTENBERG. So you're saying if the Federal Government can provide the resources, you'd like to have the communities involved, the counties, the States involved.

I was curious, Mr. Fiedler, you're Chairman of the Committee on Highway Traffic Safety, American Association of State Highway and Transportation Officials, so you're talking for a whole group of highway officials throughout the Country?

Mr. FIEDLER. Yes.

Senator LAUTENBERG. You say your State's adopted the administrative revocation, what's the major obstacles, do you think, with other States getting into that? Have you been able to make the case to your colleagues, those who are members? Do you have all 50 States as members?

Mr. FIEDLER. Yes, all 50 States are members.

Senator LAUTENBERG. You must have discussed this as a tool for getting the drunk driver off the road; why haven't we had more States join in on this particular program?

Mr. FIEDLER. Many of our member States of AASHTO are basically highway officials, and they don't get involved in the law enforcement area, and so we don't, as a committee, have not directly addressed that issue very specifically. Very frankly, I was just made Chairman of the Committee last Fall, and we've just had one meeting so far this year, but we have brought on our committee more than just traffic engineers. We've brought on other people that represent the law enforcement arena, represents the highway safety arena, as well as the traffic engineering, and we brought along a number of CEO's, if you would, like myself, on this committee.

So we are in the process now, of looking at addressing the broader issues in AASHTO, more than just traffic engineering. That will be on our agenda in the future.

Senator LAUTENBERG. Good. We encourage it.

Don't you think that uniform adoption of administrative revocation would be one of the single most effective steps that we could take, keeping in mind whatever unique burdens we might place if it's too short a period, et cetera. I mean, we'd get the refinements in the law, but don't you think that across this country if we had the uniform administrative revocation process that that would be perhaps the single-most effective tool we could take?

Mr. SPIER. I agree with you, I think that would be the best possible thing. But I think I can also address with what was just indicated before, the driver license action and such is not always in the same agency that we're talking of highway construction and such. So when you place a sanction on highway construction, you are not always reaching the agency that has the authority to do it.

Senator LAUTENBERG. I appreciate what you're saying. Each of you seems to favor the incentive approach as opposed to a sanctions approach, and Senator Reid may have a question or two about that, but apart from that process, just the simple uniform administrative revocation of a license, if we were able to adopt that into law, would we have provided an effective tool to combat drunk driving across this country?

Mr. SPIER. I agree.

Mr. FIEDLER. AASHTO does not have a policy on that, so I can't—but speaking as the Secretary from Wisconsin, yes, I think it would have a benefit.

Senator LAUTENBERG. Thank you.

Mr. Spier, in your testimony you note that North Dakota's administrative revocation law has been very effective, that the threat of this action cut down arrests and suspensions by over 45 percent over three years. We recount your testimony correctly, I assume?

Mr. SPIER. That's right.

Senator LAUTENBERG. You obviously, then, think that this could be effectively used in other States as well?

Mr. SPIER. I agree. I think it's the best possible way, if you're talking of removing the driver immediately. It's prompt. There's no delays.

Senator LAUTENBERG. Okay.

Then—and this will be my last question—is it fair to say that pressure from the Federal Government, either incentive or sanc-

tions, or whatever, helps push the States to adopt tougher drunk driving laws?

Mr. SPIER. I agree with that.

Mr. FIEDLER. Yes.

Senator LAUTENBERG. Thank you very much.

Senator Burdick, do you want to ask a question?

Senator BURDICK. Mr. Spier, North Dakota is one of only 17 States that have qualified so far for section 408 Alcohol Incentive Grant Program funds. I believe we were the first, if I'm not mistaken.

How was it that the State was able to overcome impediments and establish this important program so early?

Mr. SPIER. I guess North Dakota happened to be the first State that complied to receive the 408 funding. I think in our State we had the support of the Mothers Against Drunk Drivers, and they were a strong support in our State receiving legislation, the 408 funding was available, it was an additional criteria that our legislators looked at and said there would be the additional support of the revenue to get the State started and promote these programs. And it has been very effective.

Senator BURDICK. Well, I was pleased to hear that the MADD program is working to some degree.

Mr. SPIER. They have been a very effective and a very helpful group in supporting these types of programs.

Senator BURDICK. Well, how was it that the State was able to overcome a lot of the impediments and problems that existed elsewhere and enact this program so early? How did that happen?

Mr. SPIER. I don't think that things always come easy. There's been a lot of effort behind this to get the law to work. We've been modifying it every year to solve some of the problems we've had. But it's always been to the better. Because I think when we've done surveys in the State of all walks of life, and most of the people—I think it's 82 percent of them—support this type of legislation. And so we have the total population support behind us.

I think that was a question addressed earlier, relating to the people being out of jobs because of the repeat offender. We've also done surveys in that area, and we find that the employers will support, and not lay off somebody because he's been convicted of a second offense. They will go out of their way to provide support to make the program work. Those that we found that lost their jobs, was not due to the conviction of a DUI, but it was other problems that the individual had. So it's been very positive, when you get the support of the people within your State.

Senator BURDICK. What role did the highway patrol play in this improvement?

Mr. SPIER. We have, through the utilization of some of the 408 funding, highway patrol has been doing all the additional training to all enforcement, whether city, county, whomever, in the use of the breathalyzers, equipment of this nature. And they have played a strong role in supporting this program. We provide other funding through them, again, for various community programs, ways to reach the younger group under 21. That's where we have to get to, the younger people, not the older people.

And so, if we can convince the younger generation in the high school level that the problems there are with the use of alcohol and its effects, I think we'll have really accomplished something as they grow up.

Senator BURDICK. I've heard that fatalities depend on the road, too, to a degree. I can't quite believe it, but they say that the interstate in North Dakota is much safer than the country roads for this particular activity, is that right?

Mr. SPIER. I agree, since the speed limit issue has come up our interstate has been very safe in North Dakota.

Senator BURDICK. That's all. Thank you.

Senator LAUTENBERG. Thank you very much, Chairman Burdick.

Senator Reid?

Senator REID. Thank you.

I haven't had the opportunity to express to anyone from North Dakota what a pleasure its been for me to be able to be on Chairman Burdick's committee. We're here gathered today to talk about a national problem, as I see it, and as we see it, but we in this committee, of which he's the Chairman, deal with many other things; nuclear power, nuclear regulation generally, solid waste, clean air, clean water, acid rain, highways—we have wide jurisdiction, and it's a compliment to the State of North Dakota that we have someone in the Senate that we can lean on and look to for advice and counsel, that we all do for Chairman Burdick. And if you'd take that message back to the people of North Dakota, that would be great.

You have indicated that North Dakota qualifies for section 408 funds, as does the State of Nevada. But in spite of the incentives that are set up in 408, we only have 17 States that have qualified. And most of the States, with the exception of New Jersey, Alabama, and Indiana, are States that are generally sparsely populated. I don't know if there's a message in that or not, but perhaps there is. I think the real message is, though, that the vast, vast majority of the States do not have the things that section 408 gives a State, and that's why we're here today. Because we must do more.

We've heard some general statements that sanctions may not be the right way to go. I'm sure it's always difficult when people talk about sanctions. Again, I bring up the 21-year-old age for drinking as a problem. People said that would never work, we can't do it, we have to leave that choice to the States. Well, it was a national problem, and so we set a standard. I don't think it's hurt the ability of States to do what they have to do in this federalism that we have.

So, I guess my question to each of you, why only 17 States? Why do only 17 States qualify?

Mr. FIEDLER. I can't answer, because I don't know. So, I can't respond, Senator Reid.

Senator REID. Mr. Spier?

Mr. SPIER. I guess I can't answer it either. It is a very difficult criteria, and to get all things in place I think the timing would have to be exactly right, and you would have to have the total support of your people.

Senator REID. Do you understand, Mr. Spier, while we're waiting for this great society to develop, people are being killed every day.

We've been here now for a little over an hour, three people are dead because of drunk drivers. We don't have, in my opinion, the luxury of waiting until things are just right.

The answer is the one you've given. It's just not quite right for the State to do it now. There are other things, we've got droughts, and we've got a lot of things that are higher priority, and that's why we're approaching it as a national problem.

I would also say that there are other ways that the Federal Government can approach these kinds of things. We can just pass a Federal law. That, I think, would be wrong. That's why we're doing it either with incentives or sanctions. We have the authority on Federal highway issues just to pass laws to mandate all the things that are in these bills.

Let me ask both of you, what do you think of the blood alcohol level? Is 0.10 the right number, or is 0.08, or do you have an opinion?

Mr. FIEDLER. In Wisconsin we have a 0.10 now, and we think that's reasonably effective, although there may be a better number. And so I can't react if it would be a better number at 0.08, or whatever.

Senator REID. Mr. Spier?

Mr. SPIER. North Dakota has the 0.10, and we've looked at the 0.08, and the toxicologist indicates that before we attempt to go to the 0.08 that we should provide additional training to our law enforcement and such, because you are making a considerable change. So they'd need to be provided with additional training to detect the individual at a lower level.

Senator REID. We have a panel today which will address that. These are people who are in the street, so-to-speak, arresting people. That's their job. And I'll be anxious to hear from them.

I have no more questions, Mr. Chairman.

Senator LAUTENBERG. Thank you very much, Senator Reid.

We'll discharge this panel, and just say one thing. That we heard concerns about whether or not someone may be jobless for a period of time because they've lost their license. Well, people who go to prison are also jobless for a period of time while they are incarcerated. And the fact is, that a drunk who's driving is essentially doing the same as someone who's carrying a lethal weapon. The only thing that they haven't done is pull the trigger. But if we pick someone up who's got a gun, in most States, if they're carrying a gun, a loaded gun, they're going to jail. And they will be away from their job for some time.

So, I'm not particularly sympathetic to someone who loses time at work because their license has been suspended, and they failed the test. I think that we ought to preserve the constitutionality of the administration law, absolutely at all times. We have to administer justice fairly. But someone who's driving drunk, who has, as Senator Reid has mentioned, the potential to kill a group of youngsters innocently, on their way home on the school bus; or a child standing on the corner holding her mother's hand, waiting for the bus to take her to school, to me that person ought to pay the price. If they're caught, by golly, they ought to go to jail, or they ought to lose their license, if they haven't been involved in a fatal accident;

if they have been involved in a fatal accident, they ought to pay a big price for it.

Thank you very much.

We'd like to call the next panel which is Ms. Norma Phillips, Ms. Stone, Mr. Brian O'Neill. And we ask the indulgence of Panel Number Three, who consists of Lieutenant Oaks and Sergeant Kotowski, if you would indulge us, please.

We'll do away with as much of the ceremony as we can, ask you to consolidate your statements. I'm particularly pleased to see Norma Phillips as I am with all of you. I work so closely with you. Your organizations have done a great job. But MADD deserves a special note of credit for the work that they did with me in getting the 21 drinking law bill passed, and for the commitment that you have to save lives on the highways, and to do it the most effective way, through the law, and through knowledge and education.

We thank you, and first the panelist would be Ms. Phillips. A short statement, Norma, if you can. We have your full statement for the record. Thank you very much.

STATEMENT OF NORMA PHILLIPS, PRESIDENT, MOTHERS AGAINST DRUNK DRIVING

Ms. PHILLIPS. Thank you, Mr. Chairman.

I'd like to introduce Becky Brown, who is with me today, who is the Chair of our Legislative MADD Committee. And I would like to comment on one of your suggestions, that I think we also have to think about the innocent victims, who no longer can hold a job. Many of them have been killed or injured due to drunk driving. We always consider what is going to happen to the drunk driver, and is he going to be able to keep his job. And I think we need to focus on the victims also.

My name is Norma Jeanne Phillips and I am the National President of Mothers Against Drunk Driving, a 1,100,000-member organization of drunk driving victims and their supporters, dedicated to ending impaired driving in America.

I am testifying today in favor of legislation which encourages states to enact administrative license revocation laws. Administrative revocation of driver's licenses, with proven worth as a DWI countermeasure, is MADD's number one legislative priority.

In 1987, approximately 23,632 individuals died in alcohol-related crashes, and an additional 560,000 were injured. That's one person every minute injured, in the Nation, by a drunk driver, with an estimated cost to society of $24 billion.

These figures tell us much about the impact of drunk driving, but often we become numb to statistics, and it takes a horrible tragedy to focus our attention.

Americans were reminded a few weeks ago of how far we still have to go, when a school bus full of youth became an inferno at the hands of a drunken driver in Kentucky. We can only wonder if he might have thought twice before drinking and driving that day, if he would have lost his license immediately when he was arrested for drunk driving in 1984.

MADD has always sought to identify effective means to prevent impaired driving and to deal with those who do choose to drink and

drive, or use drugs. Since August, 1987, we have worked intensively toward the goal through a Model DUI Legislative Task Force, composed of experienced professionals in the traffic safety field, developing resources to aid our activists in implementing these strategies. The measure unanimously identified as the Task Force's top priority was administrative revocation.

In March of this year, our organization joined with the Insurance Institute for Highway Safety in unveiling a new study on drunk driving countermeasures. The centerpiece of that study was the finding that where States have adopted a system of automatic license sanctions, the number of drivers in fatal crashes have been reduced by nine percent. If all States were to pass this measure, many more drivers might be prevented from involvement in such crashes.

Senator Lautenberg, in March you and your colleagues joined our organization in calling for this vital measure by announcing S. 2367, the new legislative effort to encourage State adoption of administrative revocation.

Also, we were pleased to note the leadership of Senator Reid in introducing S. 2523, which like 2367, the Lautenberg/Danforth Drunk Driving Prevention Act, contains requirements for administrative revocation and other key drunk driving countermeasures supported by MADD.

S. 2367 would offer incentive grants to States implementing these countermeasures, and S. 2523 would impose sanctions on those States failing to act. From MADD's perspective, these bills provide different routes to the same destination.

Twenty-three States and the District of Columbia have already passed administrative revocation. Our goal is to have these statutes adopted in the remaining 27 States as soon as possible.

An administrative revocation system parallels the judicial process in dealing with offenders. While the court handles criminal offenses committed by the drunken driver, the other deals with removing the privilege, not the right, of the individual to drive. Under administrative revocation, a driver may be stopped if probable cause to suspect impairment exists, and the license is taken on the spot if the driver either fails or refuses a test to determine intoxication. The right to due process is protected by allowing the driver to request a hearing to appeal the revocation during a period of time following the arrest. We favor making the hearing period of short duration and putting the burden for seeking the hearing on the impaired driver.

Under our traditional court system, the drunk driver is allowed to keep his or her license until his case goes to trial, with an average time from arrest to license suspension of 120 days, sometimes longer, sometimes even up to a year. During that time he or she continues to drive, frequently drunk, with a valid license in his or her pocket. Orchestrated by a skillful defense attorney, the judicial process can be delayed indefinitely or, even worse, arrange for a plea bargaining to a non-alcoholic offense for which there is no loss of license.

In contrast, administrative revocation is applied swiftly and surely, connecting the consequence with the offense in an immedi-

ate manner which removes from the highway the threat imposed by the drunk driving.

And I would just like to say, in closing, that only about a fourth of those involved in alcohol-related crashes are being tested at this time. And I think far too often impaired drivers who are injured or killed find havens in hospitals where they typically escape detection and prosecution for their offenses.

And we would also like to say that S. 2367 would also provide support to those States which take steps to enforce the drinking age, through color-coded licenses for drivers below the age of 21. We feel this has been effective. And North Carolina has experienced and validated this approach with 47 percent reduction in crashes involving the 18-year-olds or under, under their Safety Road Act in 1983, which included the 21 drinking age.

We are really pleased that we have been asked to be a part of this session. And although I have much more in my written testimony, I would like to close by saying that both the House and the Senate are preparing legislation to spend billions to combat drug abuse, when in fact, alcohol is by far the most widely abused drug in America, continuing to kill thousands on our highways. You go out to any school, and the kids will admit, alcohol is the drug of choice.

And in closing, my son Dean and his fiancee were killed in 1981 on Thanksgiving Day. And this drunk driver kept his license for one year. My nightmare was that this man would drink and drive and kill another family's son or loved one. My son's license came back to us two weeks after he was killed. The point is, the man that killed my son kept his license for one year.

Thank you very much for letting us be a part of this, and if there's any questions, we'll be happy to answer them.

Senator LAUTENBERG. Thank you very much, Ms. Phillips.

I'm at this point, going to return the Chair to Senator Reid, not without thanking you and thanking the other members of the panel. I'm sorry that I can't stay further.

I must tell you one bizarre twist of the 21 law. Somebody called my office and said that since I've closed the 21 drinking age loophole, that those kids have taken up drugs and wish that I hadn't started in the first place with the thing. And here, you point out so eloquently that alcohol has a more devastating record in terms of causing death and destruction than drugs. All of us feel very strongly about the drug issue, and we're going to continue to work on it. But I do intend, as we move the drug bill along, to introduce a drunk driving addendum to the drug bill.

Ms. PHILLIPS. Good.

Senator LAUTENBERG. Thank you very much, and excuse me. Senator Reid?

Senator Reid [presiding]. Thank you for your leadership in this area, Senator Lautenberg.

We'll hear now from Judith Lee Stone.

STATEMENT OF JUDITH LEE STONE, DIRECTOR, FEDERAL AFFAIRS, NATIONAL SAFETY COUNCIL

Ms. STONE. Thank you, Mr. Chairman.

The National Safety Council, through its President, was an active member on the Presidential Commission on Drunk Driving, which recommended in 1983 that States should enact legislation to require administrative license suspension. In addition to our support for this recommendation, the Council strongly supports S. 2367, the Drunk Driving Prevention Act of 1988, introduced by Senator Lautenberg, and Senator Danforth, and others, as a helpful and appropriate vehicle for furthering efforts to adopt these important State laws and programs.

We have seen an enormous amount of progress in highway safety, especially in the last six to seven years, due in large part to tougher drunk driving laws. The American public is far less tolerant of drunk driving than they were 10 years ago. It's no longer funny for Johnny Carson to joke about the issue. But alcohol is still involved in approximately half of all traffic fatalities, so we still have our work cut out for us.

We believe, though, that in this fairly complicated field of highway safety, that change sometimes comes slowly. It is an evolving process, and programs must be allowed to work for a while before they are accepted as standard operating procedure society-wide. Support for these kind of test efforts from Federal, State and local resources form an important partnership for creating solutions to these highway safety problems.

In a sense, we think that the States have been kind of readying their systems for the past five years to move aggressively forward with administrative license suspension. Recordkeeping systems are continually being upgraded; State drunk driving laws are evaluated and toughened; and highway safety officials and citizens groups work with the courts to streamline procedures. The foundation is there, but resources are scarce and the Federal support for State efforts is a key element for this major licensing and drunk driving reform.

We know that no one program or action is a total solution to any of these problems, but when this kind of window of opportunity for positive drunk driving publicity and action opens for us, such as this one, it's very important for us to pursue it aggressively.

Mr. Chairman, in conclusion to this short statement, we think that any State that is really serious about making further progress in combating drunk driving should enact an administrative license revocation law, so that the enforcement community will have this most important tool for swift and sure punishment of the drunk driver.

Thank you.

Senator REID. Mr. O'Neill.

STATEMENT OF BRIAN O'NEILL, PRESIDENT, INSURANCE INSTITUTE FOR HIGHWAY SAFETY

Mr. O'NEILL. Mr. Chairman, there is now widespread agreement that administrative license suspension laws are effective in reducing the magnitude of the alcohol-impaired driving problem. But at present, only 24 jurisdictions have them; that is why we're talking about Federal efforts to change this situation.

And Federal efforts in the past to cajole or coerce State legislators into enacting highway safety measures have had varied results. In some cases, such as the very recent and successful effort toward the 21-year-old alcohol purchase age legislation, Federal sanctions were an important impetus to get those laws changed in many States.

In the case of motorcycle helmet laws, on the other hand, the story is quite different. When Federal lawmakers empowered the U.S. Department of Transportation to cut off highway funds to States without helmet laws, legislators in all but three States enacted such laws. But when the three holdout States faced actually losing Federal funds for failing to enact helmet laws, the authority to impose such sanctions was removed. As a result, most States eventually abandoned or substantially weakened their motorcycle helmet laws. What this history tell us, then, is that Federal sanctions can be problematic. Sometimes they work, other times they have been removed when they were about to be implemented.

Federal incentives, the carrot as opposed to the stick of sanctions, may also be problematic. For example, Congressional action in 1973 allowed the U.S. Department of Transportation to increase Federal highway safety grants to States by up to 25 percent if a safety belt use law was passed. But the result wasn't heartening. Not a single State joined Puerto Rico in passing such a law.

This doesn't mean that there shouldn't be Federal involvement. It is quite the contrary. Without Federal involvement some important State safety laws wouldn't be on the books. So whatever action the Federal Government can take to encourage or to coerce States into adopting administrative license suspension laws should be taken as soon as possible.

I think what we don't need at this time, is additional study to determine at which blood alcohol concentration people are impaired. The National Academy of Sciences has already studied this issue, very recently, and they concluded, and I quote, "performance on driving-related tasks decreased at any blood alcohol concentration above zero and crash risk increases sharply as blood alcohol concentration rises." This is now a well-established scientific fact.

It is because of this fact—the fact that any amount of alcohol impairs—that we shouldn't speak in terms of a drunk driving problem. Impairment occurs at blood alcohol concentrations well below that we think of as drunk. That is, people don't have to be drunk, at least not in the conventional sense of what drunk means, to make driving after consuming alcohol unwise. Now, some people, because of this, would claim that present thresholds for defining impairment, which in the United States are typically 0.10 percent—should be lower. Some people even suggest it should be as low as zero.

We don't think this is realistic. We shouldn't set blood alcohol concentration thresholds that probably wouldn't have public support and couldn't be effectively enforced. The fact is, both alcohol and driving are part of our culture, and unfortunately some mixing of them is inevitable. The question is, how much mixing are we prepared to tolerate? To address this, we have to know what the societal consequences are, in terms of highway deaths and injuries, when varying amounts of alcohol are consumed.

According to the most recent data on the blood alcohol concentrations of drivers who have been drinking, and are then fatally injured—this is the best information we have on the magnitude of the problem—on weekend nights, seven percent of these fatally injured drivers have low blood alcohol concentrations, 11 percent have moderate blood alcohol concentrations, and 81 percent have blood alcohol concentrations that are above .10 percent. In contrast, the roadside sample of drivers on weekend nights has shown that, among those who have been drinking, 70 percent have low blood alcohol concentrations, 19 percent have moderate blood alcohol concentrations, and 12 percent have high blood alcohol concentrations. Drivers with very high blood alcohol concentrations, therefore, represent only a small minority of all drinking drivers but a substantial majority of the drinking driver fatality statistics. They are 12 percent of the drinking drivers but 81 percent of those involved in fatal crashes. It is this group of drivers, the drivers with high blood alcohol concentrations, that we most want to remove from our highways, so it is this group on whom our laws and enforcement efforts should continue to be focused.

Public support is always important if laws are going to be effective. We don't want to run the risk of losing support in this case by setting unrealistically low BAC thresholds. And we don't want to dilute our already limited enforcement efforts by greatly expanding the number of offenders. As long as the death and injury problem from alcohol-impaired driving is dominated by the minority of drinking drivers with very high blood alcohol concentrations, it makes sense to focus our laws and enforcement efforts on this group.

This doesn't mean that the present blood alcohol concentration thresholds are optimum. It may be that somewhat lower thresholds, for example, 0.08 percent as in a few States, Canada, and the United Kingdom, would be more appropriate. This is a question that still needs to be studied.

Finally, I'd like to mention, as an aside, the question that keeps coming up when we talk about drunken driving, or alcohol-impaired driving and sanctions, that is the question of can people get to and from work if they lose their driving license. It is repeatedly stated that the loss of a license is an unnecessary hardship because so many people may lose employment because of this sanction.

Many years ago, at the Institute, we did some research to address this question. And we asked a sample of Americans, essentially the following question: If you had your leg in a cast, and were unable to drive to work because you were not able to drive, could you find alternative ways to get to work? And the overwhelming bulk of people can find an alternative way to work when they are unable to drive. If you ask them a question is relation to the losing their license because of a drunken driving conviction, you'll get a different answer. Ask them about their leg in a cast, and they will tell you there are ways they can get to and from work.

Thank you, Mr. Chairman.

Senator REID. Thank you for your testimony. I'm sorry that all Senators were not here. The testimony of this panel, as with the other panels, is outstanding.

You should each know that the Court Reporter here takes down all the testimony. The testimony will be reported and given to the committee staff, and subsequently to the individual Senators, and that's how we make decisions around here.

I know that you, Ms. Phillips, have to leave. Before you do, I would say that as with Sandy Everly in Nevada, who is the MADD Representative from the State of Nevada, do a great job. But I think a lot of us take for granted the work that you do, not recognizing that the way this organization was started is a result of people getting killed. I'm sure that you've told the story of your son and his death many times, but I'm sure each time that you've told that story, it's pulled on the heartstrings of those within the listening audience like it did me. So I think you should keep telling that story. It's an important story that needs to be told, because we have to have public support for what we're trying to do. It can only come through people like you, organizations like yours. So I appreciate your testimony.

I have a couple of things that I'd like to say before you leave, and of this panel generally. You could all respond. Senator Chafee, who is one of the fine Senators here in Washington, asked that question. He was interested in the response that would come. I repeat, from my experience, those provisionary licenses are nothing but trouble. I think that they are a license to avoid a penalty that a person should be forced to face. I think that I'm going to look at the legislation to make sure that there can be no provisional licenses during that period of time. If we really mean what we say, that there must be certainty of punishment, rather than severity, then we have to stick with it, as one witness has already said, we must at least have a mandatory 30-day total nonuse of that license. Does the panel here agree?

Mr. O'NEILL. Absolutely, Senator.

Ms. STONE. Right.

Ms. PHILLIPS. The choice is made when a person chooses to drink and drive. Then the consequences that follow really are his or her discretion.

Senator REID. I will also, Mr. O'Neill, remember for a long time the example that you gave of the person with a cast on his leg. There are ways of getting to work. And as I say, in response to what Ms. Phillips said, if there aren't ways to get to work, then that must mean part of the loss, they won't have a job.

The people that are injured aren't able to go to work, sometimes forever, and so I think that we have to recognize people who drive while they're drunk for what they are. They're criminals.

Mr. O'NEILL. Mr. Chairman, the research clearly showed that there are alternative ways to get to work. It's just more inconvenient, and that's what we're talking about when we really get down to the issue. If you lose your license you can still find a way to work, but it's just more inconvenient. And I think more inconvenience is insignificant in terms of the problem we're dealing with.

Senator REID. The legislation that I have introduced talks about administrative revocation and what I have heard here today, everybody agrees with administrative revocation.

I also have a 0.10 per se illegal. I've heard your testimony, Mr. O'Neill, it's my understanding that the MADD organization believes it should be 0.08 or lower?

Ms. PHILLIPS. That's correct.

Senator REID. The one reason 0.10 looks good at this time, is the vast majority of the States have it. And it would mean less disruption of what they already have. But, as I mentioned in my opening statement, I think that we have to look at maybe making it at least 0.08. As a result of one of the statements that I gave on the Senate Floor, people have said to me, you're just pushing this because you don't drink and you don't want anybody else to drink. Well, the point of the matter is, that at 0.10 people can still drink and not meet that test. They can have a minimum of four beers, at least that's the way I understand it, and still not be legally drunk with a 0.10. Maybe even have five beers. What we're trying to do here is to prevent people from driving while they're drunk.

Is there general agreement with the panel on that?

Ms. PHILLIPS. Mr. Chairman, American Medical Society has come out with a very interesting statement that says everyone is impaired at 0.05. And like other Scandinavian countries, their BAC limit is 0.05. And it was very effective. Most people that will try to drink and then drive on these tests, that gets a lot of publicity, finds that a 0.05 they're considerably impaired to drive.

Senator REID. Well, I think that's very strong testimony. I think we can't go without again emphasizing here, the American Medical Association recommends 0.05. What we have in this legislation is double that. So I don't think we're being punitive.

I think that we're being fair with this 0.10, and I think if anything, we should lower it rather than talk about raising it as some people have suggested it.

I have also, in my legislation, a provision for forfeiture of drivers' license and license plate of repeat offenders. Could I have the panel's thoughts about that?

Ms. PHILLIPS. I think it's important, Mr. Chairman. Becky Brown and myself, we both lost sons in drunk driving crashes. And I think until we, as a Nation, start costing the drunk driver what they have cost society, we're not going to win this war on drunk driving. And any type of sanctions, like administrative revocation, loss of license plates, I think that that gives a strong message to the United States that that is socially unacceptable.

Senator REID. Mr. O'Neill?

Mr. O'NEILL. Mr. Chairman, we know from good research, that many motorists who've lost their license as a result of a DUI, or other type of conviction, will continue to drive. So anything we can do to limit that is going to make a difference. Unfortunately, license suspension does not solve the problem, and we've got to move forward on many fronts, so I think removal of the plates of the car would be another step in the right direction.

Senator REID. Before dismissing the panel, let me just say that I've already said the positive things about Mothers Against Drunk Driving, keep up the good work.

I also think it's important to recognize the National Safety Council for the efforts that they've made, not only in this area, but

many other areas to help make our country a safer place to be. We appreciate your being here.

Frankly, Mr. O'Neill, I don't know anything about the Insurance Institute for Highway Safety, but I will learn something about it after today. Your testimony was not only probative, incisive, but also, I think, more importantly, it indicates that the insurance industry is concerned about highway safety, as well they should be. I'll bet that the insurance industry, in some manner, supports the efforts that you're making, and have financed your institute. So I think that's good, and the insurance industry should be commended for doing that. And if I'm right, take my thanks to the industry.

Mr. O'NEILL. You are correct, Senator, they fund us entirely.

Senator REID. Thank you very much.

Ms. PHILLIPS. Thank you.

Ms. STONE. Thank you.

Senator REID. The next panel of witnesses will be Lieutenant Randy Oaks, Las Vegas Metropolitan Police Department and Sergeant Peter J. Kotowski, Traffic Commander, New Castle County Police Department, New Castle County, Delaware.

Gentlemen, if you would take your places, and accept our apology for the inordinate amount of time that you've had to wait in not only cooling your heels here for a while, but also we have necessitated your missing lunch. The only solace I give you for that is, I've missed lunch and breakfast also.

If we could proceed first with Lieutenant Oaks?

STATEMENT OF LIEUTENANT RANDY OAKS, LAS VEGAS METROPOLITAN POLICE DEPARTMENT

Lieutenant OAKS. Thank you, Senator Reid.

Rest assured that I've missed lunches, dinners, and a lot of sleep at the hands of drunk drivers.

It's with great pleasure that I represent Sheriff John Moran and the Las Vegas Metropolitan Police Department by offering testimony on the subject of drunk driving bills, S. 2367 and 2523. The concerns of drunk driving are a priority issue of our agency, and we have been very active in promoting awareness and firm enforcement of Nevada's DUI laws.

Our Department has conducted sobriety checkpoints in Clark County, Nevada for the past five years to promote awareness and provide a deterrent against drinking and driving. In addition to sobriety checkpoints, we deploy special DUI enforcement teams, both on a regular and an overtime basis.

The high profile awareness programs that we've conducted serve to bring attention to the seriousness of the DUI epidemic and the fight against the "wild west" image of Nevada.

We have trained our traffic officers in the latest and most effective techniques of determining intoxication levels such as horizontal gaze nystagmus and drug recognition. As a result, we have increased the number of arrests for lower levels of intoxication, slightly over the 0.10.

My reason for making mention of the sobriety checkpoints, awareness campaigns, enforcement teams, and special training, is that they all cost money. We've been very fortunate to receive

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State managed Federal monies for the checkpoints and some of the training, but the rest of it has to come from our budget. For this reason, we strongly support the provision of S. 2367, which provides for basic and supplemental grants for drunk driving enforcement. We feel that continued and enhanced grant funded programs are essential to our ability to provide effective drunk driving enforcement programs.

Both S. 2367 and 2523 call for an expedited drivers license suspension and revocation system. Nevada presently has an effective system wherein an officer takes immediate possession of a suspected DUI driver's license if a chemical test indicates legal intoxication or if the driver refuses to submit to a chemical test. The 90-day revocation is mandated for illegal per se of 0.10, or for a criminal DUI conviction on first offense. A second offense, or a refusal to submit, results in a one-year revocation, and a third offense in seven years requires a three-year revocation. As an incentive not to drive while the license is revoked for a violation of DUI law, a criminal statute mandates a minimum of 30 days imprisonment, and a $500 fine, and maximum of six months and a $1,000 fine for that violation. We feel that Nevada's drivers license suspension and revocation system is fair and effective, and support imposing those requirements uniformly across the United States.

Both bills also call for mandatory blood alcohol testing subsequent to a serious injury or fatal collision. The Nevada implied consent statute specifically allows an officer to direct that reasonable force be used, to the extent necessary, to obtain a sample of blood from the person to be tested under these conditions. We believe this is essential to the establishment of legal intoxication in these serious injury and death investigations, and we support this provision as well.

S. 2367 calls for a self-sustaining drunk driving enforcement program wherein DUI fines and surcharges fund comprehensive DUI prevention programs. This is something we don't have in Nevada, but would fully support. Enforcement and prevention programs are vital in the war on drunk driving but are very expensive to sustain. And funding by those persons who are part of the problem seems most appropriate.

S. 2367 requires an effective system for preventing drivers under 21 years of age from obtaining alcoholic beverages, which may include an easily distinguishable under-21 drivers license. Nevada has substantial controlling statutes for selling and serving alcoholic beverages, and drivers licenses issued to persons under 21 have a side profile photo. Adults have a full face photo. We support that provision as well.

S. 2523 requires State laws to provide for the suspension of any motor vehicle owned by an individual who has committed certain alcohol-related crimes. We do not have current statutes in Nevada requiring this action, although it has been discussed in past legislative sessions. My concern with that particular provision is that there are a lot of loopholes, and we don't want to see a loophole built into a system where a driver can feel like he is beating the system, or at least beating part of it. The benefits of an effective method of imposing these sanctions would be undisputed on our part, but we cannot see a practicable method of doing so.

In summation, we support major portions of both 2367 and 2523 because we believe that the citizens of Nevada, and of the entire United States, will benefit from the strong message the Federal Government will send to the people by the passage of tough, anti-drunk driving bill.

And I appreciate the opportunity to have addressed the honorable committee.

Senator REID. Sergeant Kotowski.

STATEMENT OF SGT. PETER J. KOTOWSKI, TRAFFIC COMMANDER, NEW CASTLE COUNTY POLICE DEPARTMENT, NEW CASTLE COUNTY, DE

Sergeant KOTOWSKI. Thank you, Senator Reid.

In February 1983, the State of Delaware revised its DUI laws. One of the things that came about was the two-track system, where a person can be prosecuted both administratively and criminally for an offense of DUI. The one, and the most notable thing here is that the person's license is removed from that person, is seized by the officer at the initial arrest, and then the person is then subjected to a two-tier system. One is that he can have a hearing, if he requests it within 15 days, before a motor vehicle hearing officer to show why his license should not have been revoked at that particular time.

If that person attends that motor vehicle hearing and is ruled in favor, in his benefit, then the person has his driver's license reinstated to him, and then he still now has the court challenge to face. And if convicted in the court, then his motor vehicle operator's license would then be revoked. If he loses at the motor vehicle hearing, and has his driver license revoked, and wins at the court level, and is found not guilty in a court of law, the provision still holds true that his driver's license is in a state of revocation for a minimum period of 90 days. And during this 90-day period, this person cannot drive or get behind the wheel of an automobile in any way, shape or form, until after he goes through an evaluation and rehabilitation process, as deemed by the Department of Motor Vehicles. This process may be as little as a 16-hour educational program where he receives instructions about the effects of DUI and how it effects his driving, or up to a mandatory in-house rehabilitation program for a period to be determined by the evaluating agency. Every person who is arrested in the State of Delaware must go through this program before his driver's license is reinstated.

After this 90-day period has been completed, this person goes through that program, he is required to pay all the bills associated with his treatment, and as they relate to his particular case. Then he must go through a background investigation to see if he is now competent and can handle the reissuances of his driver's license to be able to continue to drive.

And then finally after this is met, it costs him $125 additional to have his driver's license reinstated. And to add insult to injury, on his side, that if his driver's license has expired during the time period that he was revoked, he must pay an additional $10 fee to have his driver's license returned to him.

This provision of the law has been very effective. The officers have now finally obtained something that they can put their hands on, so-to-speak, at the time that the arrest is made, because they actually take that ever, most important thing in a person's life, that driver's license, and they take it right from him face-to-face.

The State of Delaware also has a provision that has not been utilized, only because apparently there are some problems in establishing the mechanism, of seizing the automobile of a repeat offender. It is outlined in the law, that if a person continues to drive after they have been revoked for a DUI offense, that the license that the motor vehicle can be seized and held until such time as his driver's license is returned to him. However, there have been some bugs in this section of the law that have not been worked out, and it's not been that effective. But hopefully in the near future, through funding sources and so forth, as we're discussing here under Senate Bill 2367, some of these funds can be made available so that Delaware can straighten out that problem.

In Delaware, also, the implied consent law has allowed us to withdraw blood samples from persons, even against their will, if we have probable cause to do so; persons involved in fatal crashes, persons who are repeat offenders. The Attorney General in the State of Delaware, Charles Oberley, just recently issued a directive to all the police agencies in Delaware, that he would like to see this section of the law carried out. And not allow a police officer to read or allow a person to invoke the implied consent by refusing to submit to a chemical test. Therefore, the blood samples will be taken in all cases of repeat offenders, as well as persons involved in accidents resulting in injury.

Delaware's provision in the implied consent area, also includes multiple testing. And multiple testing means that often times we now are running into persons under the influence of cocaine, and other illegal substances. They are submitted to a breath test, they blow zero-zero on the machine, and the officer knows that they are impaired to some degree. Delaware's provision allows us to further test them, and obtain blood samples, and if necessary, urine samples for the analysis to determine what type of substance they have abused, or are under the influence at the time the events took place.

In the State of Delaware this dual track system, the revisions to the implied consent law, mandatory revocations, have shown to be quite effective. The State of Delaware consists of only three counties, and a population of approximately 600,000 people. Approximately 70 percent of that population resides in New Castle County. The State of Delaware has congested communities and metropolitan areas, rural and agriculture areas, and in the southern portion of the State, a heavily utilized, popular seashore resort. Because of its size, makeup, and population, the State of Delaware provides an ideal area to evaluate the programs as outlined in this legislation we're talking about today.

The State of Delaware has already felt the positive effects of a two-track system, mandatory revocation and the things that I have mentioned. The system and many of its provisions have been effective to the degree, and the immediate responses have been that in the State of Delaware 60 percent of the persons who have request-

ed the administrative hearing have been found to be in violation and have had their driver's license revocation upheld. The new law has resulted in a dramatic increase of DUI arrests Statewide. From an average of 1,625 prior to 1983, to an average of 6,141 DUI arrests since the enactment of this legislation. This reflects a 375 percent increase in just six years.

During this six-year period the total police forces in the State of Delaware, and we're talking about local, and not just the major agencies of the New Castle County, or Delaware State police, have increased their involvement here by 470 percent.

In the State of Delaware currently, the number of crashes have increased by 25 percent. The total number of alcohol-related injuries has decreased by 29 percent.

Senator REID. I appreciate both your testimonies.

You have both stated what happens in your respective States, and I think they could be a model for other States. The problem, however, is lack of a standard, or uniformity. Would you both agree to that?

Lieutenant OAKS. Agreed.

Sergeant KOTOWSKI. Yes, I would.

Senator REID. For example, Sergeant, when you run into someone from outside of the State, a tourist that's driving in Delaware, do you also take their license?

Sergeant KOTOWSKI. No, sir.

Senator REID. Pardon me?

Sergeant KOTOWSKI. We do serve them with a notice of revocation, and with that notification is, he is suspended to drive, his privilege to drive a motor vehicle is now revoked within the State of Delaware.

Senator REID. Which isn't much is it?

Sergeant KOTOWSKI. Well, if he has a beach resort, or he continually travels through the State, and he's apprehended again, he would show that he is revoked in the State of Delaware, even though he does hold a valid New Jersey, Pennsylvania, New York, or some other State driver's license.

Senator REID. This is what I talked about during the first panel of witnesses.

Lieutenant Oaks knows the circus that we find when we go to court in Nevada. Those judges are overwhelmed with traffic cases. Prosecutors are looking for ways to get rid of those cases. They're overworked and there is too much to do. Therefore, there are a lot of deals made, plea bargains, as we call them. I don't, certainly, slight anybody for doing it, so it's probably the only way under the system to get the work done.

But wouldn't it be interesting that you in Delaware, you in Nevada, if Joe Jones is arrested, wouldn't it be nice to know that that person has been arrested three other times in Nevada, even though it's his first time in Delaware? Wouldn't it be nice if you had some data bank you could draw out the former arrest, not convictions, just arrests, because it would give that prosecutor a light—hey, no deals with this guy, he's already been arrested three other places.

Do you acknowledge that would be helpful to you?

Lieutenant OAKS. Senator Reid, I don't think there's much doubt about that being an aid to the enforcement, or at least the prosecution of a DUI offender, having more knowledge of that person's background.

Senator REID. One of the things that I've talked about with this proposed law, is that if we have administrative revocation, that it accomplishes a number of things. We know about the risk of repeat offenses, and accidents are reduced, operation of the enforcement system is expedited. But here's something I've talked about, and I want to see if you agree, because you're down in the trenches, so-to-speak. Law enforcement morale rises as they can see real results. It used to be, in Nevada, and I use that as an example, and we've heard some testimony about it here today, someone is arrested for driving under the influence, weeks and months go by before there is any decision made about that driver's license. Under the administrative revocation something happens quick. That's a help to law enforcement as far as a morale factor, is it not?

Sergeant KOTOWSKI. Yes, it is.

Lieutenant OAKS. Yes, sir, it is.

Senator REID. We have heard some talk here with the two of you about implied consent. Lieutenant Oaks, is it still, in Nevada, if you refuse to take one of the tests, either blood, or breath, or urine, I assume, that your license is automatically revoked or suspended?

Lieutenant OAKS. Yes, sir. That's for a period of one year. You mentioned urine. Urine is not available unless special circumstances exist, such as the presence of drugs or in the case of a hemophiliac.

Senator REID. Okay.

So, and you would certainly acknowledge that's been a help?

Lieutenant OAKS. Yes, sir, a great help.

Senator REID. Do they have that in Delaware?

Sergeant KOTOWSKI. Yes, sir.

Senator REID. And that's a big help, isn't it?

Sergeant KOTOWSKI. Tremendous.

Senator REID. If someone refuses to take one of those tests, they're automatically suspended?

Sergeant KOTOWSKI. If the officer decides that he's going to invoke the implied consent law section. If he does not, then he can utilize whatever force is necessary to obtain, and in most cases, obviously, it's the blood sample that is taken.

One other thing that is Delaware's law that covers that, if a person is taken to a medical facility for treatment, we do have the right, and it has been upheld within the court system in the State of Delaware, that the State Attorney General's Office can subpoena the records of that blood testing that the hospital did for treatment purposes, and utilize that blood alcohol content that they obtained for their purposes.

Senator REID. You have made that point, and that is a good point.

Would the two of you acknowledge that drunk driving is a national problem?

Sergeant KOTOWSKI. Definitely.

Lieutenant OAKS. Yes, sir.

Senator REID. You have heard these two women in their frustration, join an organization called Mothers Against Drunk Driving. And what help do you need? You've seen the two laws, you both testified about them. Is there anything that we haven't covered in those two proposed pieces of legislation that you feel would be a help to law enforcement?

Sergeant KOTOWSKI. I think probably one point that was brought out here from the other panels, is the prima facie case be lowered from the 0.10 that it currently is. Obviously, the American Medical Association, and a number of other organizations, support that anything above 0.05, a person is under the influence.

And when we're talking about driving an automobile, we're talking about a decision making process and an action making process that we go through hundreds of times, through the utilization of our senses, our eyes, our ears, and in some cases our nose, and most importantly, our hands and our feet. And when that ability is impaired to any degree, we have to remember that that vehicle is traveling at a rate going 55 miles an hour, about 80 feet per second. And when that perception is delayed, that person does not react, and cannot do the things that normal people do to avoid having a collision.

And just an easy example of that is, on how that reaction time can affect it, one of the DUI detection techniques that we have taught our officers, and they're being utilized in the field quite extensively, is how a vehicle reacts to the changing of a traffic signal. When we drive an automobile and we approach a traffic signal, we say, the traffic light just turned yellow. I'm either going to have to step on the gas, or step on the brakes. A person that is under the influence, and one of the things that we found as a detection cue is, they react after they clear the intersection. The brake lights come on after the vehicle has cleared the intersection, and the light has already changed to red, or they accelerate after doing that. And that is because that person is impaired. And if that degree of impairment has been established that it is down as low as 0.05, or anything greater than a 0.05, then I think that we should start moving in that direction. And I think that a .08 would be an easy level to obtain, and an easy level to evaluate before proceeding any further.

Senator REID. Before I let you go, we have talked about administrative revocation, and you acknowledged that that is an appropriate way of handling this situation. You've also both indicated that we should look at the 0.10, and make a decision as to whether or not it should be lower. How do you feel about the 0.10, Lieutenant Oaks?

Lieutenant OAKS. We're comfortable with the 0.10, however, we are looking at submitting a bill draft before the Nevada Legislature this session, for an impaired driving statute at 0.05 to 0.09, with certain restrictions, so that a good DUI, 0.10 or higher, could not be dealt down to an impaired driving. We don't want to open the door for that, but we do think that we need to get more people in the system at lower levels of intoxication.

And I think maybe substantially less criminal penalties would be attached to the impaired driving statute than the DUI.

Senator REID. You would agree with the statements that I have made that the key to this is certainty of punishment, rather than severity?

Lieutenant OAKS. Yes, sir.

Senator REID. They must know what's going to happen, and there should be no question about what's going to happen.

Lieutenant OAKS. Agreed.

Senator REID. I've also called for in my bill, mandatory testing in crashes resulting in fatalities or serious injury. Would you acknowledge that's an appropriate standard?

Sergeant KOTOWSKI. Yes, sir.

Lieutenant OAKS. As I indicated in my testimony, Nevada law provides for that, allows the officer to do it, however, it's not mandatory. But we would support that, and we see that as a simple cleanup of language of our existing statute.

Senator REID. What do you think of the forfeiture of driver licenses and license plates of repeat offenders?

Lieutenant OAKS. I addressed that I believe there is a problem, not with the drivers license, but with the license plate. And let me address the drivers license first.

Not only do we have to take it away, but we have to make sure that there is an incentive for that person not to get behind the wheel. Taking away that license certainly doesn't guarantee that he won't drive again, which is why I pointed out the Nevada statute carried a minimum sentence of 30 days imprisonment, if you're caught driving after a DUI suspension. And I think that's an important element of a revocation program.

With regard to license plates, I just see that there is a problem coming up with a practical way of imposing that restriction, so that other people aren't punished for that, such as the case of——

Senator REID. You've been around lawyers too long.

Lieutenant OAKS. You're probably right, Senator.

If a vehicle is registered in more than one name, or we go by a legal owner, we're going to run into some problems, and I'm just concerned of building a loophole into the system to where a person might feel like they beat the system, or part of it, because they got away with that particular thing.

Senator REID. One of the things I remember studying in law school is under certain instances you could seize someone's car, just take it. One that comes to mind, is some type of narcotics offenses. We've recently seen the zero tolerance by the Coast Guard, and others, on ships at sea. Now, I know there's been some criticism of that, but it's been very effective. People are very concerned about what they're going to take aboard their little ship to go to the Bahamas or whatever.

So, I acknowledge the concern you have for the lawyers in the world, create more work for them, but also I think we have to acknowledge that taking a person's driver's license, as you've indicated, doesn't do the trick. But taking that person's ability to drive the car, that is having no license plate, makes it a lot tougher. And so, I acknowledge the problems that you point out, but certainly don't throw in the sponge on that one. I think that we need to look at that very closely to see if it would be effective.

Sergeant, how do you feel about it?

Sergeant KOTOWSKI. As I stated, in the State of Delaware, we have a provision to seize the vehicle for a period of time. And once again, we've run into quite a legal problem, and it hasn't been done, because of joint ownership. And just how can you maintain something like that. Just the license plate itself is an easier route to go, but once again, I think that the same problems are prevalent, and it's something that maybe we can look for some other kind of alternative, whatever that may be.

Senator REID. Remember, the legislation directs taking that person's license plate. And that's something that we'll pursue, the staff will pursue, to determine if he's driving someone else's car, you wouldn't take his license plate.

But also, I think we have to consider if he's not driving his car, then we'll take his license plate off of his car wherever it might be. And it will make it that much more difficult for him to drive at a subsequent time.

I appreciate very much, Sergeant, whoever your boss is—who is that?

Sergeant KOTOWSKI. My superintendent is Colonel John R. McCarnan.

Senator REID. Well, I appreciate his allowing you to come today, and to help us with this very difficult problem that we have in the Country today. And, of course, I'll personally thank Sheriff Moran for allowing one of his prize pupils to come back to Washington.

Thank you both very much.

Lieutenant OAKS. Thank you.

Sergeant KOTOWSKI. Thank you, Senator.

Senator REID. This hearing is adjourned.

[Whereupon, at 2:05 p.m., the committee was adjourned.]

[Statements submitted for the record and the bills S. 2367 and S. 2523 follow:]

STATEMENT OF GEORGE REAGLE
ASSOCIATE ADMINISTRATOR FOR TRAFFIC SAFETY PROGRAMS
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES,
TRANSPORTATION AND INFRASTRUCTURE
OF THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

JUNE 29, 1988

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss the national effort to reduce the problem of drunk driving.

At your request, I will address the legislation introduced by Senator Lautenberg, and cosponsored by Senator Danforth and others, to establish a new incentive grant program to help reduce drunk driving (S. 2367), and the legislation introduced by Senator Reid, with Senator Lautenberg's consponsorship, to impose sanctions on states that do not adopt certain drunk driving control measures (S. 2523). To establish a context for our views on these bills, I will first give you a status report on the national effort to reduce the effects of drinking and driving, with a special focus on the effectiveness of measures which Congress and the states have already enacted.

Although alcohol is still involved in a high percentage of all highway deaths, we have seen the benefits of numerous drunk driving countermeasures in the public and private sectors. The preliminary data for 1987 indicate that the downward trend in alcohol-related fatal crashes has continued, although at a slower rate. The proportion of fatalities involving alcohol intoxication fell to 40 percent, down from 41 percent in 1986 and 46 percent in 1982. By 1986, the latest year for which we have complete data, the proportion of drivers involved in fatal crashes who were legally intoxicated had dropped by 14 percent from the 1982 level.

Over this same period, the most significant improvement occurred in the proportion of teen-aged drivers in fatal crashes who were legally intoxicated. This proportion dropped by 26 per cent. As the result of Congress's enactment in 1984 of a law making 21 the national uniform minimum drinking age, all fifty states and the District of Columbia have now adopted this most important safety measure. Based on the agency's estimate for the effectiveness of minimum drinking age laws, our preliminary estimate is that these laws saved the lives of about 1,000 people in 1987 and have saved some 4,400 lives since the drinking age laws began to be raised in 1982.

Another Federal law which came into effect during this period is section 408 of title 23, United States Code, the grant program for alcohol traffic safety programs, which Senator Lautenberg has used as the model for his new proposal. Under Section 408, a state becomes eligible for a basic grant by adopting four measures: prompt suspension of licenses for

a period of not less than 90 days (30 days of which must be absolute suspension) for first offenders and one year for repeat offenders, mandatory confinement or community service for a second conviction within five years, establishment of a blood alcohol content of .10 per cent as a per se violation, and increased enforcement and education efforts.

We agree that those are important elements of a comprehensive, effective program to combat impaired driving, and we have strongly supported their adoption and implementation at the state level. The efforts by the states to meet these Section 408 criteria, along with other ongoing efforts to review and improve alcohol countermeasures, have contributed substantially to the inroads we have begun to make in reducing the problem of impaired driving.

The seventeen states which have improved their programs to the point of meeting this broad range of requirements have achieved significant improvements in their drunk driving programs. States that have improved their programs to the point of qualifying for section 408 alcohol safety incentive grants have made more progress, as a group, in reducing the proportion of their intoxicated-driver fatalities than states that have not qualified for these funds. Most of the states qualifying for the basic Section 408 grants have also qualified for supplemental grants by adopting measures such as rehabilitation and treatment programs, statewide recordkeeping programs to identify repeat offenders, the establishment of financially self-sufficient local programs, and the granting of presentence screening authority to the courts. Those states have also been able to make effective use of the financial assistance

obtained under Section 408, by funding projects to improve the training of police and to support enforcement programs through improved public information and education campaigns.

All in all, the Section 408 program has helped to stimulate a number of effective measures to reduce drunk driving and has thus made a useful contribution to the comprehensive attack on the drunk driving problem. It also represents a move away from the use of sanctions to ensure long-term and systematic state action, a move which we strongly support.

It is also important to recognize that other states have made commendable progress in addressing the menace of drunk driving, even if they have not met all of the Section 408 criteria. New York State's "STOP DWI" program, for example, established financially self-sufficient local programs around the state to combat drunk driving, along with stronger penalties for those convicted of the offense. While New York does not meet the "prompt license suspension" criterion of Section 408, and thus does not qualify for the Federal incentive grants, the state's program is nevertheless a model in many other respects.

Based on our experience in administering the Section 408 grant program, we have some observations on how a Federal incentive grant program on drunk driving should be structured:

* It should include only general criteria, which are not overly detailed, so that states are not disqualified for minor deviations.
* It should recognize that there are many aspects to the problem and various countermeasure approaches, to avoid diverting attention and

resources into a single program.

* It should permit flexibility among the states in the overall design of their drunk and drugged driving countermeasure activities, in recognition of their differing sizes and governmental structures, and in the interests of Federalism.

The relative inflexibility of the Section 408 program, as currently implemented, has resulted in only one-third of the states qualifying for grants. We recently undertook a rulemaking effort to ease restrictions which resulted from our implementing regulations, which we hope will help additional states to qualify, but we cannot alter the statutory criteria themselves.

Having said this, I must now tell you that we do not support the enactment of either S. 2367 or S. 2523. I will address S. 2367 first. While this bill is in several respects similar to the Section 408 program, it appears to duplicate part of the 408 program and is less flexible. Individually, most of the concepts behind the bill have merit, and some have already been adopted as part of the states' response to Section 408. We strongly encourage the states to adopt administrative systems for license suspensions and to develop self-sufficient funding mechanisms for their programs. It is our view, however, that the bill may accomplish little that has not already been accomplished by Section 408, and that it might have the result of requiring the award of grants to states for programs of lesser scope and effect than those provided by Section 408. It will not help the majority of states which do not already have the capacity to quickly process suspensions and revocations.

Let me illustrate these points by focusing on the principal element of S. 2367: the criterion for administrative suspension and revocation of licenses. Under the bill, a state would become eligible for a basic grant by adopting an enforcement program in which the arresting officer would have authority to take an offender's license on the spot and issue a notice of license suspension or revocation. Although the suspension or revocation could subsequently be determined by a judge, it would in all likelihood be made instead by an administrative hearing officer. This program thus incorporates a system of administrative revocation which has been widely accepted as an effective means of reducing drunk driving.

We believe the administrative system is a good one and we have strongly encouraged its adoption by all the states, but we do not believe that S. 2367 will induce additional states to adopt such a system. Those states which have sought Section 408 grants have generally found that they could not meet the "prompt suspension" criterion (which we define as 45 days, or 90 days if the state has a plan to move to 45 days) unless they adopted an administrative system. Of the 16 states presently qualified under Section 408, 11 have met the "prompt suspension" requirement through the adoption of administrative systems. Thirteen other states have adopted administrative systems but have not qualified under Section 408 either because they are still not able to suspend licenses within the period defined for "prompt suspension" or because they have failed to meet other criteria. Along with the related criterion that the suspension be absolute for the first 30 days, with no "hardship" exemptions, the prompt suspension criterion has been a significant barrier to additional states qualifying for Section 408 grants.

This brings up the first problem with S. 2367: the bill would require a final action on suspension or revocation to occur within 15 days, far less than the period specified under the existing Section 408 criterion. We believe that there are only two groups of states which could conceivably meet a 15-day criterion: a small group of states (perhaps only two or three) which already qualify for Section 408 grants, and an even smaller group (perhaps only one) which have very quick license suspensions but which have failed to meet other criteria of the broader Section 408 program. With respect to the first group, the bill would result in a substantial bonus for work that has already been accomplished under Section 408; with respect to the second group, the bill would reward programs of narrower scope than thought desirable under Section 408. We do not regard either outcome as desirable or effective in reducing drunk driving.

We believe that measures for dealing with multiple offenders, such as those in Section 408, are essential to any balanced program. We also question the incremental impact on safety of reducing the time from 45 days to 15 days, even if it were practicable for the states to do so. In our view, and that of many of the states which have met the Section 408 criteria, a revocation or suspension within 45 days, and a requirement that at least 30 days of the suspension be "hard," create the deterrent effect which the prompt suspension criterion was intended to achieve.

I have already suggested our second concern with S. 2367: its narrow scope. We do not question the effectiveness of administrative revocations, but we believe that to be effective an alcohol safety

program must have several integrated components. The states have made significant progress in all aspects of their alcohol programs since 1980, largely in response to the growing public awareness of the seriousness of drunk driving. Grass-roots organizations such as the Mothers Against Drunk Driving have been instrumental in focusing public attention on the problem. Section 408 has helped to highlight specific solutions, and may yet reach additional states. We intend to continue to work with the Section 408 states as their programs mature and to encourage the extension of these states' programs to additional states.

As a second condition for eligibility for a basic grant, S. 2367 would require a state to have a "self-sustaining drunk driving enforcement program' under which fees from offenders would be returned to communities with comprehensive drunk driving programs. The bill also provides for supplemental grants, for which states would be eligible upon their adoption of mandatory blood alcohol testing for drivers involved in fatal crashes and their establishment of an effective program for preventing drivers under age 21 from obtaining alcohol. Although we believe that these measures have the potential to improve a state's drunk driving program, we believe that the youth program, in particular, should be a part of a more comprehensive effort that could include such measures as provisional licensing, lower alcohol concentrations for a violation of *per se* laws, training in false ID recognition, and an overall emphasis on enforcement.

The second bill considered in today's hearing, S. 2523, would impose highway funding sanctions on a state which does not adopt each of four measures to control drinking and driving: administrative revocation of

licenses within 15 days, mandatory blood tests of drivers involved in fatal crashes, a blood alcohol content of .10 per cent as a per se violation of criminal law, and the confiscation of vehicle license plates of repeat offenders. The first three of these measures are contained in S. 2367, in one way or another; the fourth resembles somewhat a law recently enacted in Minnesota. We believe that each of them, with details tailored to the individual needs of the states, can be effective in a balanced alcohol countermeasures program, but we are not prepared to support the imposition of sanctions on states that do not have these programs. This is particularly true of the proposal to confiscate vehicle license plates, and the requirement to revoke licenses within 15 days, which would lead to sanctions for almost every state. As long as the public continues to demand tough drunk driving laws, states will adopt measures if they are convinced of the programs' effectiveness, without the need for sanctions.

As I mentioned earlier, we have seen positive safety results in our effort to move the highway safety program away from its former emphasis on sanctions. The reduced proportion of drunk driving which has occurred in the 1980's is the product of increased cooperation at all levels of government and the intense involvement of grass roots organizations. We believe that the imposition of sanctions would diminish this cooperative enterprise and diminish the overall effectiveness of the campaign against drinking and driving. Even the 21 drinking age law, which was supported by a strong consensus, was backed by sanctions only after a long period of public debate and only because the states with lower drinking ages were adversely affecting safety in neighboring states with age 21 laws. No similar interstate problem is presented here that could be solved by

these programs. We therefore oppose S. 2523.

In the coming year, NHTSA will continue to emphasize programs that increase both the perception and the reality that drunk driving will be detected and punished. We continue to believe that the public's belief in the certainty of enforcement -- a phenomenon we call "general deterrence" -- is a key to reducing drunk driving; accordingly, we will continue to stress public information and education programs as a part of every enforcement program. In addition to modifying the rules implementing the section 408 program, we are also increasing our activities in other respects. One example is the comprehensive effort called Techniques for Effective Alcohol Management -- TEAM -- whose goals are to develop sensible alcohol policies for professional sports events and to enable arenas to act as role models for community actions against drunk driving. TEAM is an outstanding example of public and private sector cooperation in the effort to combat drunk driving. We believe that the local coalitions being formed as part of the TEAM effort will, in the long run, form the basis for long-term systemic changes at the community level. For the coming year, we hope to concentrate on forming these local coalitions as well as on enlisting the cooperation of the National Football League in the TEAM program. Other agency activities include training for police in detecting impaired drivers and for prosecutors and judges in handling these cases, developing strategies to communicate the dangers of alcohol and drug abuse to high school students, and continuing our cooperative efforts with organizations such as Mothers Against Drunk Driving (MADD), Students Against Drunk Driving (SADD), and Remove Intoxicated Drivers (RID).

Our resolve is to use every possible means to keep public attention focused on the dangers of drunk driving. We must constantly develop new initiatives such as the TEAM program. The future success of the drunk driving program depends on the continued involvement of people at every level of the public and private sector. I want to thank you for holding this hearing and helping to keep the drunk driving problem, and its potential solutions, before the public.

Mr. Chairman, this completes my prepared remarks. I would be happy to answer any questions you may have.

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

LENO MENGHINI, President
Superintendent and Chief Engineer
Wyoming Highway Department

FRANCIS B. FRANCOIS
Executive Director

STATEMENT FOR THE

SENATE COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ON

SENATE BILLS S.2367 AND S.2523

BY

RONALD R. FIEDLER, CHAIRMAN
STANDING COMMITTEE ON HIGHWAY TRAFFIC SAFETY
AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

JUNE 29, 1988

Founded in 1914, AASHTO represents the departments concerned with transportation and highways in the fifty states, the District of Columbia and Puerto Rico, to foster the development, operation and maintenance of an integrated national transportation system. The active members of AASHTO are the duly constituted heads and other chief directing officials of the member transportation and highway agencies.

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Mr. Chairman, my name is Ronald R. Fiedler. I am the Secretary of Transportation for the State of Wisconsin. I am also the designated Governor's Highway Safety Representative for our State.

I am today representing the American Association of State Highway and Transportation Officials where I serve as Chairman of the Standing Committee on Highway Traffic Safety.

I have reviewed the two Senate bills that are the subject of this morning's hearing, S.2367 and S.2523. I can say without reservation that AASHTO stands foresquare behind the clear intent of these bills. All fifty-two of the AASHTO member departments have in common the responsibilities of planning, designing, constructing and operating most of the Nation's higher volume street and highway systems. All of them also share in the sorrow and dismay of more than 40,000 annual deaths due to accidents on the Nation's highways. Beyond this, of course, is the terrible toll in personal injuries and the destruction and loss of vehicles, equipment and other property due to highway crashes.

Mr. Chairman, we are well aware that approximately half of this annual fatality toll involves alcohol or drugs. Any step which serves to reduce the number of impaired drivers on our highways cannot help but to have an important, beneficial effect in reducing that terrible statistic, and we would applaud legislation which would effect such a reduction.

The AASHTO member departments collectively have an important impact on the establishment of the highway environment. As I mentioned, a very large proportion of the mileage of the higher volume road facilities are directly under our care. Beyond this, the standards and guides that our committees develop and maintain are frequently adopted and used by non-AASHTO highway owning agencies. While we recognize that our efforts in establishing a safe highway environment are far from complete, we believe that much has been accomplished in this area. Research and experimentation have built a considerable body of knowledge on such safety-enhancing features as clear zones; better delineation; gentler foreslopes; wider, flush shoulders; signs with greater conspicuity and clarity; more effective and safe traffic barriers; and many, many others. The United States has one of the lowest accident rates related to exposure in the developed world and while much credit must of course go to better, more crashworthy vehicles and better trained, more skillful drivers, some of this is undoubtedly due to a highway environment which has gradually become safer and is, we believe, continuing to become so.

Having said that, let me hasten to restate that much, much remains to be done. With the growth in highway travel projected by virtually everyone to take place in the years ahead, further large reductions in the accident rates simply must occur just to keep the toll from rising, let alone causing it to recede. And therefore steps that serve to reduce the number of alcohol-impaired drivers would be most welcome.

Turning to the specific bills, they differ from one another principally in the method for encouraging responsiveness on the part of state governments. One seeks such responsiveness through an incentive program; the other seeks to

sanction non-responsive states through a reduction in their federal highway aid apportionments. On this matter, AASHTO has a simple though clear policy, and I quote:

"Elimination of Sanctions

H50 Incentives should be developed where needed to encourage states to comply with federal policies, and federal sanctions should be eliminated or reduced in number."

This policy, I think, accurately and succinctly expresses our view with respect to these two bills. Some of the reasons for our opposition to sanctions are the following:

(a) Sanctions are frequently counterproductive - The purpose of either bill is presumably to foster greater safety, i.e. fewer accidents than would have been the case had it not been enacted. Denying highway apportionments to a state runs counter to that fundamental goal, in that a reduced level of investment in the highway plant will almost certainly degrade its safety. The net effect on a non-complying state, regardless of the reason for its failure to comply, is not simply a retention of the status quo ante, but more deaths and injuries than would have been the case, caused directly by the existence of the statute.

(b) Sanctions are poorly targeted. The imposition of sanctions on a given state would have the effect of reducing the ability of state DOT or highway department to accomplish its mission of providing a safe, efficient and effective system of highways. That agency usually has no responsibility with respect to traffic law enforcement and may have little or no credibility or influence with the other entities in state government who do have such responsibility. It thus is a classic "whipping boy" situation, where the "punishment" is administered to the non-offending "boy".

(c) Sanctions lead to program distortions. The impact of sanctions--five percent of federal highway aid apportionments, for example--is so severe, that there is likely to be a considerable sentiment at both the state and federal levels to ultimately avoid imposing them, if at all possible. This sentiment is strengthened when the desired behavior called for by the federal statute imposing the sanction is something beyond the control of highway aid administrators. Program distortions and irrationally exaggerated efforts to achieve apparent compliance are a frequent result.

On the other hand, the provision of positive incentives largely obviates these concerns. The counterproductivity problem is eliminated by definition. If a state should not be persuaded of the value of the behavior exhorted by the statute even with the provided incentives, at least the situation is no worse than it was previously. Targeting is much less of a problem since most states

naturally organize themselves so that the benefits of the incentives are directed to the agency that is, indeed, complying with the fostered behavior. And incentives are much less likely to induce distortions and non-rational behavior to seemingly achieve marginal compliance.

In summary, Mr. Chairman, AASHTO lauds the intent of these bills to achieve reduced incidence of alcohol-impaired drivers on our Nation's highways. We remain firmly convinced, however, that the most appropriate and effective means for accomplishing this or any laudable goal is through incentives, not sanctions.

I very much appreciate the opportunity to express our views on these bills and would be pleased to respond to any questions by yourself or other members of the Committee.

Thank you.

Elden G. Spier
Director, Drivers License and Traffic Safety Division
North Dakota State Highway Department

Provided to the Senate Committee on Environment and Public Works

TESTIMONY ON SENATE BILL 2367, "THE DRUNK DRIVING PREVENTION ACT OF 1988" AND ON SENATE BILL 2523.

June 29, 1988; 10:00 a.m.; Dirksen Senate Office Building; Room 406

TESTIMONY TO THE UNITED STATES SENATE
JUNE 29, 1988

MR. CHAIRMAN AND COMMITTEE MEMBERS: I AM AL SPIER, DIRECTOR OF THE DRIVERS LICENSE AND TRAFFIC SAFETY DIVISION OF THE NORTH DAKOTA STATE HIGHWAY DEPARTMENT. I AM HERE REPRESENTING THE STATE OF NORTH DAKOTA. WHILE WE AGREE WHOLEHEARTEDLY WITH THE OVERALL CONCEPT OF THE PROPOSED 409 LEGISLATION, MY TESTIMONY WILL POINT OUT SOME POSSIBLE TROUBLE SPOTS FOR STATES STRIVING TO MEET THESE STANDARDS.

WE TOTALLY AGREE THAT ANYONE WHO IS TESTED AND IS FOUND TO HAVE BEEN UNDER THE INFLUENCE OF ALCOHOL WHILE OPERATING A MOTOR VEHICLE SHOULD LOSE HIS DRIVERS LICENSE ON THE SPOT. WE HAVE HAD THE ADMINISTRATIVE SUSPENSION PROCESS IN NORTH DAKOTA FOR FIVE YEARS. IT WORKS EXTREMELY WELL IN TAKING DRUNK DRIVERS OFF THE ROADS. STATISTICS PROVE THAT THESE LICENSE SUSPENSIONS HAVE A STRONG DETERRENT EFFECT ON DUI DRIVERS. DURING THE FIRST YEAR OF STRICTER PENALTIES, 5,293 PEOPLE WERE SUSPENDED. IN THE SECOND YEAR, THESE SUSPENSIONS DROPPED TO 4,633. THEY DECLINED EVEN FURTHER TO 2,906 THE THIRD YEAR, ENDING JUNE 30, 1986 -- A 45 PERCENT DECREASE IN THREE YEARS. THE WORD IS OUT ACROSS THE STATE. THE ADMINISTRATIVE PENALTIES ARE SWIFT AND CERTAIN. THOSE WHO DRINK AND DRIVE PAY A HIGH PRICE IN TERMS OF LOSING DRIVING PRIVILEGES, AND IT IS A RISK THAT FEWER AND FEWER ARE WILLING TO TAKE.

WE AGREE THAT A FIRST OFFENSE SHOULD RESULT IN A 90-DAY SUSPENSION AND A SECOND OFFENSE SHOULD BRING A SUSPENSION OF AT LEAST ONE YEAR. THOSE WHO REFUSE A BLOOD ALCOHOL TEST SHOULD ALSO HAVE THEIR LICENSES SUSPENDED OR REVOKED. DURING THE FIRST THREE YEARS OF THE STRICTER

WE ARE IN TOTAL AGREEMENT WITH IMMEDIATE LOSS OF DRIVING PRIVILEGES FOR THOSE WHO TEST AS BEING UNDER THE INFLUENCE OF ALCOHOL. BEYOND THIS MAJOR ISSUE, HOWEVER, WE ASK YOU TO TAKE A BROADER APPROACH IN THIS LEGISLATION, PROVIDING A GENERAL FRAMEWORK WITHIN WHICH STATES ARE ALLOWED TO DECIDE THE DETAILS OF THIS LAW ON THEIR OWN. LET'S SCRUTINIZE THE PARTICULAR ELEMENTS TO WHICH I AM REFERRING.

UNDER (1) (D), THE SUSPENSION IS TO TAKE EFFECT NOT MORE THAN 15 DAYS AFTER THE DRIVER FIRST RECEIVED NOTICE OF THE SUSPENSION OR REVOCATION. FIVE YEARS OF EXPERIENCE TELLS US THAT 15 DAYS IS TOO SHORT. NORTH DAKOTA BEGAN WITH A 20-DAY TIME FRAME, BUT AFTER FOUR YEARS, CHANGED IT TO 25 DAYS. SOMETIMES MAIL SERVICE BETWEEN TWO IN-STATE CITIES TOOK EIGHT DAYS. NORTH DAKOTA LAW ALLOWS UP TO 25 DAYS, AND MAY BE EXTENDED TO 35 DAYS IF A HEARING IS REQUESTED. EXTENDING THE DEADLINE GIVES THE HEARING OFFICER FLEXIBILITY TO SCHEDULE HEARINGS IN CASE OF CONFLICTS OR EMERGENCIES. SOME CASES WERE LOST IN THE PAST FOR LACK OF THIS FLEXIBILITY.

IN FISCAL YEAR 86/87, THE AVERAGE TIME FROM ARREST TO SUSPENSION OF LICENSE WAS 24.7 DAYS. IS THE 15-DAY TIME PERIOD SO CRITICAL THAT IT MUST BE WRITTEN INTO THE LAW? AS LONG AS THE AVERAGE TIME UNTIL SUSPENSION IS UNDER 30 DAYS, OR EVEN 40 DAYS, THE CONCEPT REMAINS THE SAME, AND MORE STATES WILL BE ABLE TO MEET THE FEDERAL CRITERION.

POINT (1) (E) IS ALL IMPORTANT. THE STATES MUST REMAIN IN AUTHORITY OVER THE PROCESS FROM THE TIME IT IS ESTABLISHED, THROUGH ITS BEING ADMINISTERED AND UNTIL IT IS FINALLY RESOLVED. MANDATING 15 DAYS, FOR

THE ENTIRE COMPREHENSIVE COMMUNITY APPROACH IS RELATIVELY NEW. LET'S NOT CONCENTRATE ALL OF OUR EFFORTS IN ONE AREA, SUPPORTING ONLY THESE PROGRAMS, UNTIL WE ARE ASSURED OF THEIR VALIDITY. LET'S NOT JUMP INTO THE COMPREHENSIVE COMMUNITY CONCEPT AT A COST OF LOSING EFFECTIVENESS IN OTHER PROVEN AREAS OF ALCOHOL COUNTERMEASURES. THE INDIVIDUAL STATE LEGISLATURES MUST DETERMINE WHERE FINES AND SURCHARGES ARE TO BE USED AND HOW THE DRUNK DRIVING ENFORCEMENT PROGRAM IS TO BE FUNDED.

THE STATE OF NORTH DAKOTA DOES PROVIDE FOR MANDATORY BLOOD ALCOHOL CONCENTRATION TESTING OF DRIVERS IN FATAL OR SERIOUS ACCIDENTS IF THERE IS PROBABLE CAUSE TO BELIEVE IT WAS AN ALCOHOL-RELATED OFFENSE.

IN NORTH DAKOTA, JUDGES MAY CHOOSE TO CONFISCATE A VEHICLE'S LICENSE PLATES FOLLOWING AN ALCOHOL-RELATED TRAFFIC OFFENSE. HOWEVER, SINCE WEALTHY DRIVERS ARE ABLE TO RENT OR BUY OTHER VEHICLES TO CIRCUMVENT THE LAW, WE DO NOT BELIEVE THAT THIS SHOULD BE AN AUTOMATIC PENALTY.

DRIVING UNDER THE INFLUENCE IS ALREADY A CRIMINAL OFFENSE IN NORTH DAKOTA.

AFTER THE NATIONAL ACADEMY OF SCIENCES REPORTS BACK ON THE BLOOD ALCOHOL CONTENT LEVEL AT OR ABOVE WHICH AN INDIVIDUAL IS CONSIDERED TO BE DRIVING UNDER THE INFLUENCE, SOME FLEXIBILITY WILL STILL BE NEEDED. IF THE STUDY PROPOSES LOWERING THE BLOOD ALCOHOL LEVEL PERCENT TO ANY DEGREE BELOW 0.10, THE STATES MUST BE GIVEN AMPLE TIME TO WORK THESE CHANGES THROUGH THEIR RESPECTIVE LEGISLATIVE PROCESSES. IN NORTH DAKOTA, THE LEGISLATURE MEETS JANUARY TO APRIL 1989, AND THEN NOT AGAIN

ATTITUDES AND BEHAVIOR THROUGH EDUCATION AND INTERVENTION PROGRAMS WHILE MAINTAINING A STRONG DETERRENT EFFORT THROUGH ENFORCEMENT, PROSECUTION, THE JUDICIARY, REHABILITATION AND TREATMENT.

Testimony of Norma Phillips, President

Mothers Against Drunk Driving

Before the Committee on Environment and Public Works

United States Senate

June 29, 1988

Mr. Chairman, my name is Norma Phillips. I am national president of Mothers Against Drunk Driving, a 1,100,000-member organization of drunk driving victims and their supporters, dedicated to ending impaired driving in America.

I am testifying today in favor of legislation which encourages states to enact administrative license revocation laws. These measures would provide for immediate removal of the driver's license from those who fail or refuse tests to detect alcohol in their breath or blood. Administrative revocation of driver's licenses, with proven worth as a DWI countermeasure, is MADD's number one legislative priority.

Mr. Chairman, every 22 minutes someone dies in an alcohol-related crash on our highways. In 1987, approximately 23,632 individuals died in such crashes with an estimated cost to society of $24 billion.

These figures tell us much about the impact of drunk driving, but often we become numb to statistics, and it takes a horrible tragedy to focus our attention.

Americans were reminded a few weeks ago of how far we still have to go, when a school bus full of youth became an inferno at the hands of a drunken driver in Kentucky. We can only wonder if he might have thought twice before drinking and driving that day if he had lost his license immediately when he was arrested for drunk driving in 1984.

MADD has always sought to identify effective means to prevent impaired driving and to deal with those who do drink and/or use drugs and drive. Since August 1987 we have worked intensively toward this goal through a Model DUI Legislation Task Force, composed of experienced professionals in the traffic safety field, developing resources to aid activists in implementing these strategies. The measure unanimously identified as the

Task Force's top priority was administrative revocation.

In March of this year, MADD joined the Insurance Institute for Highway Safety in unveiling a new study on drunken driving countermeasures. The centerpiece of that study was the finding that where states have adopted a system of administrative license sanctions, the number of drivers involved in fatal crashes has been reduced by 9 percent. If all states were to pass this measure, many more drivers might be prevented from involvement in such crashes.

Senator Lautenberg, in March you and your colleagues joined MADD in calling for this vital measure by announcing S.2367, the new legislative effort to encourage state adoption of administrative revocation.

Mr. Chairman, MADD is also pleased to note the leadership of Senators Lautenberg and Reid in introducing S.2523, which, like S.2367, the Lautenberg/Danforth Drunk Driving Prevention Act, contains requirements for administrative revocation and other key drunk driving countermeasures supported by MADD.

S.2367 would offer incentive grants to states implementing these countermeasures, and S.2523 would impose sanctions on those states failing to act. From MADD's perspective, these bills provide different routes to the same destination.

Twenty-three states and the District of Columbia have already passed administrative revocation. Our goal is to have these statutes adopted in the remaining 27 states as soon as possible.

An administrative revocation system parallels the judicial process in dealing with offenders. While the court handles criminal offenses committed by the drunken driver, the other deals with removing the privilege--not the right--of the individual to drive. Under administrative revocation, a driver may be stopped if probable cause to suspect impairment exists, and the license is taken on the spot if the driver either fails or refuses a test to determine intoxication. The right to due process is protected by allowing the driver to request a hearing to appeal the revocation during a period of time following the arrest. MADD favors making the hearing period of short duration and putting the burden for seeking the hearing on the impaired driver.

Under the traditional court system, the drunk driver is allowed to keep

his license until his case goes to trial, with average time from arrest to license suspension of 120 days--sometimes up to a year later. During that time he or she continues driving, frequently drunk, with a valid license in his or her pocket! Orchestrated by a skillful defense attorney, the judicial process can delay justice indefinitely or, even worse, arrange for plea bargaining to a non-alcohol-related offense for which there is no loss of license.

In contrast, administrative revocation is applied swiftly and surely, connecting the consequences with the offense in an immediate manner while removing from the highway the threat posed by the impaired driver.

Having emphasized administrative revocation, let me touch briefly on other aspects of the bills. We must have ongoing resources to implement this and other DWI countermeasures, and who better to pay the price than the DWI offenders themselves! The self-sustaining DWI program called for in S.2367 finds its model in New York State's very successful Stop-DWI system; one New York county alone generates more than $1 million per year in offender fines, which are channeled back to the county's anti-DWI program of enforcement, prosecution, adjudication and education. MADD believes each state should adopt a similar means to support long-term anti-DWI efforts, and S.2367 provides for incentive grants to those states which do so.

S.2367 also provides for supplementary grants to states which mandate testing the blood alcohol content (BAC) level of all drivers involved in crashes resulting in fatalities or serious injuries. At present only one-fourth of surviving drivers involved in fatal crashes are tested. Too often impaired drivers who injure or kill others find a haven in hospitals, where they typically escape detection and prosecution for their offenses.

S.2367 would also provide support to those states which take steps to enforce the drinking age, through color-coded licenses for drivers below 21 and other measures. The North Carolina experience has validated this approach with a 47 percent reduction in crash involvement among 18-year-olds under their Safe Roads Act of 1983, which included the '21' drinking age, liability for alcohol service to underage persons who then crash, license sanctions for underage purchase or fraudulent use of ID to purchase, and .00 BAC limit for under 18.

Both S.2367 and S.2523 contain provisions for a uniform BAC level of

.10 percent, which all but eight states now have. MADD, of course, supports efforts to lower the BAC limit in those states in which there is no limit set at .10; however, we know research bears out that impairment actually begins well below the .10 level. We are pleased to note that S.2367 calls for a study by the National Academy of Sciences to determine the level at which the driver's ability to operate a vehicle becomes impaired. As you know, the American Medical Association recommends a BAC limit of .05.

Indeed, MADD believes that the ideal BAC limit would be .00; no amount of drinking before driving can truly be considered safe. If you drink, take the bus, or let someone else drive.

Mr. Chairman, I have never met a legislator who opposes a MADD-supported measure because he or she supports drunken driving. Our opposition usually comes from those who say that tough anti-drunk driving laws cost money, or will inconvenience someone, or can wait until next year. I have been told, Mr. Chairman, that there are those who do not want to spend money to combat drunk driving right now. But both the House and the Senate are preparing legislation to spend billions to combat drug abuse, when in fact alcohol is by far the most widely abused drug in America, continuing to kill thousands on our highways each year.

I would close by sharing with you what happened to my son and our family in 1981. At Thanksgiving Day that year my son Dean and his fiancee were driving home when they were struck and killed by a drunk driver. In spite of the terrible deaths of two innocent people, it was a year before this driver was sentenced. During that time he continued to be able to drive, perhaps drunk and putting others at risk, with a valid license.

Thank you for your attention today; I will be happy to respond to your questions or concerns.

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National
Safety
Council

June 29, 1988

STATEMENT OF THE NATIONAL SAFETY COUNCIL
T.C. GILCHREST, PRESIDENT

on

DRUNK DRIVING

presented before

ENVIRONMENT AND PUBLIC WORKS COMMITTEE
UNITED STATES SENATE

Presented by Judith Lee Stone, Director, Federal Affairs,
National Safety Council

Mr. Chairman and members of the committee, I am Judith Lee Stone, Director of Federal Affairs of the National Safety Council. The Council is a private, not-for-profit, public service organization chartered by the Congress to promote greater safety and health for the American people. We are celebrating our 75th anniversary this year.

The Council is involved in public policy aspects of a wide range of highway and other safety issues, including the effects of drunk and drugged driving and excessive speed, pedestrian safety, safety belt and child safety seat use, automatic crash protection, truck safety, and prevention of injury to children. The focus of our testimony today will be on the issue of drunk driving, specifically about the importance of administrative license suspension as a drunk driving deterrent.

Mr. Chairman, the National Safety Council, through its president, was an active member on the Presidential Commission on Drunk

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Driving, established in the early 1980s to focus attention and make recommendations regarding the drunk driving problem. In its final report in November 1983, the commission recommended that states should enact legislation to require administrative license suspension. In addition to our support for this recommendation, the National Safety Council strongly supports S.2367, the Drunk Driving Prevention Act of 1988, introduced by Senator Lautenberg, Senator Danforth and others, as a helpful and appropriate vehicle for furthering efforts to adopt these important state laws and programs.

We have seen an enormous amount of progress in highway safety, especially in the last six to seven years, due in large part to tougher drunk driving, child restraint and safety belt laws throughout the nation. In addition, a few short years from now, all new cars will be equipped with automatic crash protection, and a very great number of these systems will be air bags. The American public is far less tolerant of drunk driving than they were ten years ago -- it is no longer funny for Johnny Carson to joke about the issue. Between 1980 and 1986 the number of intoxicated, fatally injured drivers declined by 22 percent; during the same period the total number of driver fatalities declined by only 8 percent. But the facts are still disturbing:

- In 1987, 48,800 people were killed due to motor vehicle crashes, up 1% from the previous year. Still, approximately half of all traffic fatalities occur in alcohol-related crashes.
- Nearly two million people suffered disabling injuries

in motor vehicle crashes in the same year.

- According to National Highway Traffic Safety Administration (NHTSA) statistics, two out of five Americans will be involved in an alcohol-related crash at some point in their lives; about two-thirds of all people killed in alcohol-involved crashes are drivers or pedestrians who had been drinking, while one-third are innocent victims.

- When alcohol in involved, the fatal crash rate of drivers between the ages of 16 and 24 is almost three times greater than that of older drivers.

So we have our work cut out for us. The National Safety Council has supported many important federal highway safety programs that have helped reduce highway deaths and injuries: the 21 drinking age law, the alcohol safety incentive grant program (known as "408"), and increased funding for Section 402 State and Community Highway Safety Grant program, a significant percentage of which is spent in the states on drunk driving countermeasures. We think state and local drunk driving programs that are funded by fines collected from drunk drivers, such as the STOP DWI program in New York State, are a very good idea. We will continue to support these programs.

But we also believe that in the fairly complicated field of highway safety, change comes slowly, especially because we are often trying to change public attitudes and driving behavior. It is an evolving process, and programs and countermeasures must be

allowed to work for a while, and almost test themselves before they are accepted as standard operating procedure society-wide. Support for these "test" efforts from federal, state and local resources form an important partnership for creating solutions to highway safety problems.

In the most recent phase of the national drunk driving program --1981 to the present time -- we have learned through research and practical experience that driver license suspension laws that take the license away on-the-spot, at the time of failure of the chemical test or refusal to take one, are effective in reducing drunk driving offenses and fatal crashes. Swift and sure loss of the driving privilege is feared by the drunk driver; administrative license suspension acts as a deterrent to drunk driving.

Twenty-two states and the District of Columbia authorize administrative license revocation. Those states are:

Alaska	Missouri
Arizona	Nevada
Colorado	New Mexico
Delaware	North Carolina
District of Columbia	North Dakota
Illinois	Oklahoma
Indiana	Oregon
Iowa	Utah
Louisiana	West Virginia

Essentially, we believe that we are at the next hurdle in the administrative license revocation area. Additional funds potentially available to the states, primarily for this purpose, through the Drunk Driving Prevention Act of 1988, are necessary. We know that no one program or action is a total solution to any problem. But when a window of opportunity for positive drunk driving publicity and action opens for us, such as this one, it is important to pursue it.

There are many other substantive reasons to support administrative revocation:

- It more expeditiously carries out the intent of implied consent laws.
- To speed up the adjudication and to avoid burdening the courts, first-time DWI offenses could be handled by swift administrative revocation of driving licenses. This does not excuse offenders but increases the likelihood that a high proportion of these drivers, when caught, would receive a penalty for DWI. Tougher penalties can be applied to repeat offenders. It is particularly important that all DWI offenses be entered on driving records so that, when caught more than once they are identified as repeat offenders. Plea bargaining often negates the alcohol-related nature of a driving offense.
- Administrative revocation has a strong deterrent effect because it provides a sanction even though judicial sanction may not prevail.
- The Uniform Vehicle Code (UVC), an important source for

many state and local traffic laws and ordinances, calls for administrative per se revocation for refusal or failure of a test for alcohol. The National Safety Council has a policy fully supporting the provisions of the UVC.

- Current administrative revocation laws have been upheld by the courts.

- Recent research on the consequences of license suspension conducted at Mississippi State University found the following: "Results of this study fail to support the contention that license suspension has a large negative impact on employment stability of DUI offenders. The percentage of suspended offenders who had been unemployed at any time in the previous year was, at most, 3% higher than the percentage of offenders who had not been suspended." Traditionally, courts have been reluctant to take a drunk driver's license away for a significant period of time because of the belief it would endanger his or her job status. This has led to issuance of "hardship" licenses in many states, which allow use of the license for travelling to and from work, or during special hours.

It has been the policy of the ational Safety Council for several years to encourage states and other jurisdictions to adopt independent civil procedures to suspend or revoke licenses on an expedited basis. We think any state serious about making further progress in combatting drunk driving should enact an administrative license revocation law so the enforcement community will have this most important tool for swift and sure

punishment of the drunk driver.

If these laws were in place and strictly enforced throughout the nation, perhaps we would read fewer stories of 27 dead, most of them children, because a drunk driver with a record plowed into a school bus. We might have kept the drunk driver off the road who killed a ten-year-old girl recently, as she waited with her mother for her school bus. Federal support for passage of an administrative license suspension law in every state is a crucial weapon in the arsenal of the drunk driving war.

STATEMENT OF BRIAN O'NEILL

HEARING BEFORE THE U.S. SENATE
COMMITTEE ON ENVIRONMENT AND
PUBLIC WORKS

ALCOHOL-IMPAIRED DRIVING

JUNE 29, 1988

INSURANCE
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The Insurance Institute for Highway Safety is a nonprofit research and communications organization, supported by the nation's property and casualty insurers, that identifies and develops ways to reduce motor vehicle crash losses. I'm the Institute's president and, at this committee's request, I'm submitting for the record information from the Institute on programs that research shows to be effective in deterring alcohol-impaired driving.

In the 1980s we, as a society, are reassessing our attitudes toward alcohol-impaired driving. As part of this reassessment, state lawmakers across the nation passed more than 700 pieces of legislation in the early 1980s aimed at alcohol-impaired driving. New laws were enacted, old laws were toughened, and enforcement was stepped up. At about the same time, deaths in crashes involving alcohol declined but, until recently, we didn't know whether the decline was related to adoption of the new legislation. We didn't know whether the new laws were effective and, if so, which kinds of laws were the most effective.

New Research Findings

Now we do. Researchers at the Insurance Institute for Highway Safety have evaluated the impact of adopting three major kinds of laws aimed at reducing impaired driving and estimated that almost 1,600 drivers were kept out of fatal crashes in 1985 because of these new laws. According to this research, another 2,600 drivers probably wouldn't have been in fatal crashes if all 50 states had similar laws.

The most effective of the three types of laws we studied requires admin-

istrative license suspension or revocation at the time of failing a chemical test for alcohol. Adoption of this kind of law reduces driver involvement in fatal crashes by about nine percent during the late night and early morning hours when alcohol involvement in crashes is especially high.

One of the two other types of laws we studied makes driving with a blood alcohol concentration (BAC) above a specified threshold an offense per se. The third kind of law mandates jail or community service for a first conviction for driving under the influence. The researchers found a positive but smaller effect following adoption of each of these kinds of laws, compared to the effect for administrative license suspension.

Federal Sanctions and Incentives

The implications of these research findings for policy purposes are important. We know now that administrative license suspension laws are more effective than other types of laws in reducing alcohol-impaired driving. As effective as they are, though, they aren't yet widespread. Only 24 U.S. jurisdictions* have them. What we need are encouragements to get this kind of law enacted in all jurisdictions.

Federal efforts in the past to cajole or coerce state legislators into enacting highway safety measures have had varied results. In some cases,

* Administrative license suspension provisions are in effect in Alaska, Arizona, Colorado, Delaware, the District of Columbia, Illinois, Indiana, Iowa, Kansas (eff. 7/1/88), Louisiana, Maine, Minnesota, Mississippi, Missouri, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Utah, West Virginia, Wisconsin, and Wyoming.

such as the very recent and successful effort toward 21-year-old alcohol purchasing ages, federal action was an important impetus. Next month, Wyoming will become the last of the 50 states to raise the drinking age, with the Governor publicly stating that holding out for a lower legal minimum age for purchasing alcohol "is not the kind of distinction by which we should be shaping our image or our future."

In the case of motorcycle helmet use laws, on the other hand, the story is quite different. When federal lawmakers empowered the U.S. Department of Transportation to cut off highway funds to states without helmet laws, legislators in virtually every state enacted such laws. By September 1975, all states except California, Illinois, and Utah required all motorcyclists to wear helmets. But, when the three holdout states faced actually losing federal funds for failing to enact helmet laws, the authority to impose such sanctions was removed. As a result, most states eventually abandoned or substantially weakened their motorcycle helmet use laws. What history tells us, then, is that federal sanctions are problematic. Sometimes they work. Other times they don't.

Federal incentives -- the "carrot" as opposed to the "stick" of sanctions -- may be problematic, too. For example, Congressional action in 1973 allowed the U.S. Department of Transportation to increase federal highway safety grants to states by up to 25 percent if a safety belt use law was passed. But the result wasn't heartening. Not a single state joined Puerto Rico in passing such a law.

Another example involves the Alcohol Traffic Safety Incentive Grant Pro-

gram, enacted by Congress in 1982 to encourage prompt license suspension and other laws by offering supplemental grants. But only 11 states* adopted administrative license suspension laws as a result of this federal action. And now, six years later, fewer than half the states have such laws on their books.

Laws requiring helmet use, safety belt use, or measures aimed at alcohol-impaired driving are essentially up to the states. This doesn't mean there shouldn't be federal involvement in such programs. Quite the contrary. Without federal involvement, some important state safety laws wouldn't be on the books. So whatever action the federal government can take to encourage or coerce states into adopting administrative license suspension laws should be taken as soon as possible.

Further Study

What we don't need at this time is additional study to determine the BAC at or above which people are impaired. The National Academy of Sciences has already studied this issue and concluded that "performance on driving-related tasks decreases at any BAC above zero and crash risk increases sharply as BAC rises." This is a well-established scientific fact.

It's because of this fact -- any amount of alcohol impairs -- that we shouldn't speak in terms of a "drunk driving" problem. Impairment occurs at BACs well below what we think of as drunk. That is, people don't have

* Arizona, Delaware, Indiana, Kansas, Louisiana, Maine, Nevada, New Mexico, North Dakota, Oregon, and Utah

to be drunk, at least not in the conventional sense of what "drunk" means, to make driving after consuming alcohol unwise. Some people claim that, because this is true, present thresholds defining impairment (typically 0.10 percent BAC) should be much lower, maybe even zero.

But this isn't realistic. We shouldn't set BAC thresholds that probably wouldn't have public support and couldn't be effectively enforced. The fact is, both alcohol and driving are part of our culture. Some mixing of them is inevitable. The question is, how much mixing are prepared to tolerate? To address this, we have to know what the societal consequences are, in terms of highway deaths and injuries, when varying amounts of alcohol are consumed.

According to the most recent data on the BACs of drivers who have been drinking and then are fatally injured on weekends, when the alcohol problem is most acute, only 7 percent have low BACs (below 0.05 percent), 11 percent have moderate BACs (between 0.05 and 0.099 percent), and 81 percent have high BACs (0.10 percent or more). In contrast, a roadside sample of drivers on weekend nights has shown that, among those who have been drinking, 70 percent have low BACs (below 0.05 percent), 19 percent have moderate BACs (between 0.05 and 0.099 percent), and only 12 percent have high BACs (0.10 percent or more). Drivers with very high BACs thus represent only a small minority of all drinking drivers (12 percent on weekend nights) but are disproportionately represented (81 percent) in the drinking driver fatality statistics. It is this group of drivers we want most to remove from our highways, so it is this group on whom our laws and enforcement efforts should continue to be focused.

Public support is always important if laws are going to be effective. We don't want to run the risk of losing support in this case by setting unrealistically low BAC thresholds. And we don't want to dilute our already limited enforcement efforts by greatly expanding the number of offenders. As long as the death and injury problem from alcohol-impaired driving is dominated by the minority of drinking drivers with very high BACs, it makes sense to focus laws and enforcement on this group.

This doesn't mean that the present BAC thresholds defining drinking-and-driving offenses are optimum. It may be that a somewhat lower threshold -- for example, 0.08 percent as in Canada and the United Kingdom -- would be appropriate. What needs to be studied is, what BAC threshold is appropriate in the United States to achieve optimum enforcement and deterrence? This is the important question, not what blood alcohol concentration produces impairment.

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TESTIMONY GIVEN BY RANDY OAKS, LIEUTENANT, LAS VEGAS METROPOLITAN POLICE DEPARTMENT, BEFORE THE UNITED STATES SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS.

Mr. Chairman and Members of the Committee:

It is with great pleasure that I represent Sheriff John Moran and the Las Vegas Metropolitan Police Department by offering testimony on the subject of Drunk Driving Bills S.2367 and S.2523. The concerns of drunk driving are a priority issue of our agency, and we have been very active in promoting awareness and firm enforcement of Nevada's D.U.I. laws.

As an example of the proactive stance local government has taken, both Clark County and the City of Las Vegas have enacted ordinances requiring alcohol server training and/or testing. The nature of this training is such that it enhances the server's ability to detect early signs of intoxication and suggests methods for tactfully cutting off alcohol service to these customers. We feel very strongly about this type of mandatory training.

Our Department has conducted sobriety checkpoints in Clark County for the past five years to promote awareness and provide a deterrent against drinking and driving. Special emphasis has been placed on holiday weekends because of traditionally higher levels of drinking drivers on those occasions. In addition to sobriety checkpoints, we deploy special D.U.I. Enforcement Teams both on regular duty and overtime basis. These teams of traffic officers sole assignment is to detect and arrest drunk drivers. They do not respond to calls or have any other non-emergency responsibility. We have sought and received news media coverage on virtually all of our special enforcement campaigns.

The high profile awareness programs we have conducted serve to bring attention to the seriousness of the D.U.I. epidemic and fight against the "wild west" image of Nevada.

We have trained our traffic officers in the latest and most effective techniques of determining intoxication levels such as horizontal gaze nystagmus and drug recognition to enhance their ability to make accurate judgements of a driver's impairment. This training allows officers to detect impairment in drivers who may not manifest their actual level of intoxication by more "traditional" field sobriety testing. As a result, we have increased the number of arrests for lower levels of intoxication, slightly over .10.

My reason for making mention of the sobriety checkpoints, awareness campaigns, enforcement teams, and special training, is that they all cost money. We have been very fortunate to receive State managed federal monies for the checkpoints and some training, but the rest has to come from our existing budget. Our population is presently one of the fastest growing in the nation and keeping up with that growth is difficult at best. For this reason, we strongly support the provision of S.2367 which provides for basic and supplemental grants for drunk driving enforcement. We feel that continued and enhanced grant funded programs are essential to our ability to provide effective drunk driving enforcement programs.

We agree substantively with many of the provision of both S.2367 and S.2523 and will address those provisions individually.

Both S.2367 and S.2523 call for an expedited drivers license suspension and revocation system. Nevada presently has an effective system wherein an officer takes possession of a suspected D.U.I. driver's license if a chemical test indicates legal intoxication or if the driver refuses to submit to a chemical test. The driver is given a notice of revocation which provides information on administrative procedures and the drivers right to appeal the action. Ninety day revocation is mandated for either illegal per se (.10) or a criminal D.U.I. conviction, first offense. Second offense within seven years requires a one year revocation and a third offense within seven years requires a three year revocation. As an incentive not to drive while license revoked for a violation of D.U.I. law, a criminal statute mandates a minimum of 30 days imprisonment and a $500 fine and maximums of six months and $1,000 fine for that violation. We feel that Nevada's drivers license suspension and revocation system is fair and effective. We support imposing these requirements uniformly across the United States.

Both bills also call for mandatory blood alcohol testing subsequent to a serious injury collision. Nevada Statutes provide for non-consensual blood alcohol testing of drivers involved in fatal or serious injury collisions if probable cause exists to believe that the driver has committed an alcohol related offense. The implied consent statute specifically allows an officer to "direct that reasonable force be used to the extent necessary to obtain a sample of blood from the person to be tested" under these conditions. We believe this is essential to the establishment of legal intoxication in these serious injury and death investigations, and we support this provision.

S.2367 calls for a self-sustaining drunk driving enforcement program wherein D.U.I. fines and surcharges fund comprehensive D.U.I. prevention programs. This is something that we do not have in Nevada but fully support. As noted earlier, enforcement and prevention programs are vital in the war on drunk driving but are very expensive to sustain. Typically, local government budgets either cannot or will not provide adequate funding to maintain such programs.

Funding by those persons who are part of the problem seems most appropriate in this case.

S.2367 also requires an effective system for preventing drivers under 21 years of age from obtaining alcoholic beverages which may include an easily distinguishable "under 21" driver's license. Nevada has substantial controlling statutes for selling or serving alcoholic beverages to minors and licenses issued to persons under 21 years of age have a side profile photo. Adult licenses show a full face photo. We acknowledge that there are a multitude of methods to employ in making minor's license distinguishable. We fully support the basic requirement and see substantial benefit from it.

S.2523 requires State laws to provide for the suspension of the registration of, and return to the State of the license plates for, any motor vehicle owned by an individual who has committed certain alcohol-related crimes. We do not have current statutes in Nevada requiring that action, although it has been discussed in past legislative sessions. One problem with this provision as written is that it addresses "...vehicle owned by an individual who..." In most cases, an individual is not the legal owner of his vehicle, rather it is leased, or owned by a financial institution. Even if the language of this provision were changed to "registered owner" we would still run up against a majority of vehicles registered in more than one name. We do not believe that other registered owners could or should be penalized by these sanctions when they had not committed any crime. The benefits from an effective method of imposing these sanctions would be undisputed on our part, but we cannot see a practical method of doing so.

In summation, without quoting a bunch of statistics, we support major portions of both S.2367 and S.2523 because we believe that the citizens of Nevada, and of the entire United States, will benefit from the strong message that the Federal Government will send to the people by the passage of a tough anti-drunk driving bill.

We appreciate the opportunity to have addressed this Honorable Committee.

Department of Public Safety

OFFICE OF THE CHIEF OF POLICE

3601 N. DuPont Highway
New Castle, Delaware 19720

(302) 571-7900

Sgt Peter J Kotowski
Commander
Traffic Services Unit
New Castle County Police
3601 North DuPont Highway
New Castle, Delaware 19720

June 28, 1988

United States Senate
Committee on Environment and Public Works
Washington, DC 20510-6175

Dear Committee Member:

This is a statement to be entered into record on S.2367, the "Drunk Driving Prevention Act of 1988".

In February 1983 the State of Delaware revised the law on DUI. This law established a two track system for DUI Offenders. DUI violators are dealt with under both administrative and criminal proceedings conducted independent of each other. The law calls for the immediate seizure of the violators license by the arresting officer, once probable cause has been established. The violator is issued a temporary license which is valid for fifteen days. The violator has a fifteen day period to notify the Motor Vehicle Department of his desire to have an administrative hearing. If the request is not made then the persons license is revoked for a minimum of ninety (90) days.

The section on implied consent was also revised. The provisions of this law provided for multiple testing including breath, blood, and urine. This provision allows for more thorough testing of persons believed to be under the influence of drugs. The most dramatic change was that at the discretion of a police officer a person may not refuse to give a blood sample. The sample could be obtained by force if necessary. If a police officer invoked the implied consent and allowed a person to refuse an alcohol test, the offender is subject to a loss of license for a minimum of one (1) year. This section also permitted the use of portable breath testers (PBTS).

Reinstatement of license requirements were also established. Every person who has had their license revoked for DUI must be evaluated and complete a specified alcohol program. The programs offered range from a 16 hour first offenders educational program, to a rehabilitation program requiring inpatient treatment.

Conditional licenses were also established under the new law. This allows for a DUI offender to receive a restricted license for a first offense after his license has been in the possession of the Motor Vehicle Department for a minimum period of ninety (90) days and other specific conditions have been met.

Lets look at a typical example on how the two track system works, with a typical DUI arrest. A police officer in Delaware stops a motorist for suspicion of DUI. The operator is subjects to a series of uniform test at the stop site. He is then offered a portable breath test (PBT). The PBT indicates a reading of .15%BAC. The officer then takes the operator into custody and back to his police station or troop. The person is then requested to take a breath test. The test results for this person resulted in a reading of .15%. The violator is then placed under arrest for DUI. The arresting officer completes his required paperwork. He seizes the violators license and issues him a temporary license, and notice of revocation. The violators license is then forwarded to the Department of Motor Vehicle. The violator contacts the Department of Motor Vehicles and requests a probable cause hearing. The hearing is conducted by a hearing officer of the Department of Motor Vehicles. At the hearing the officer must establish that he had probable cause to make the arrest. The hearing officer will render a decision in the case at a later date by mail. If after hearing the case probable cause was established the violator will be revoked for a minimum of ninety (90) days for the first offense. If the hearing officer rules in favor of the violator his license is returned.

If the violator has not been convicted for DUI in the last five (5) years, has not accumulated 3 or more violations within two (2) years, was not involved in an accident resulting in injury to another person, did not have a BAC above .20%, and was driving with a valid license, he is eligible for the first offenders program. He is not subject to the minimum fine of $200.00, and can enter the program and receive his license in ninety (90) days. If he does not meet the above requirements then he must stand trial.

If this violator refused to submit to the breath test, and the officer invoked the Implied Consent Law then his license would be revoked for a minimum of one (1) year. If the violator refused the breath test the officer could take him to a hospital and have the blood sample taken even against the violators will.

If the violator had the administrative hearing rule in his favor but was convicted by the court for DUI his license would still be revoked. If the violator had been ruled against in the administrative hearing, but the court ruled in his favor his drivers license would still be revoked.

The Attorney General for the State of Delaware Charles Oberly issued a directive to all police agencies in the State of Delaware not to invoke the implied consent law to persons involved in personal injury accidents, or fatalities. He has directed that a blood sample be obtained even if the person refuses to cooperate.

When the new law went into effect an in-service training program was established for the New Castle County Police. Because the officers had a good understanding of the law how it works enforcement increased. The

officers felt that they had an immediate impact on the violator because they seized that ever important drivers license.

Some officers feared that the administrative hearing would serve as a discovery hearing for the defense attorney, and would be detrimental to their case in court. Those fears for the most part proved false. There have been times however that the fears were justified. The positive effects of the the two track system outweigh the few negative cases.

The area where the two track system has had the greatest effect is its application to persons arrested for Vehicular Homicide and Vehicular Assault. The person arrested has his license revoked at the time of his arrest and most times is revoked until after the criminal trial which can often take months to be heard. This often eases the pain on the families of the victims because the person is not driving around as if nothing happened.

Effective June 1, 1988 the State of Delaware began issuing a drivers license with a security feature called Polasecure. Persons under the age of 21 will receive a license with top and bottom red borders. "under 21" will be printed in red on the two side borders. "Under 21" will also appear on the back of the license. The word Delaware and gold hens will be added to all licenses to authenticate them.

The State of Delaware consists of three counties and a population of approximately 600,000. Approximately 70% of the population resides in New Castle County. The state is small and offers a metropolitan area in northern New Castle County, congested communities, rural and agricultural areas, are prevalent throughout the state. Lower Delaware offers popular seashore resort. Because of its size, make up and population Delaware
provides an ideal area to evaluate the provisions outlined in this legislation.

The State of Delaware has already felt the positive effects of a two track system. This system and many of the provisions in this legislation have proven their effectiveness in this state.

NOTE: Attachments to this statement have been retained in committee files.

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WILLIAM T. TAYLOR
DIRECTOR
GOVERNOR'S REPRESENTATIVE

July 15, 1988

Honorable Quinton N. Burdick
United States Senate
Committee on Environment
and Public Works
Washington, D.C. 20510-6175

Dear Senator Burdick:

As the Governor's Representative for Highway Safety and Director of the Division of Highway Traffic Safety, I would like to take this opportunity to offer comments on S-2367 and S-2523.

Over the past several years, New Jersey has made significant strides in reducing drunk driving. From 1981 to 1985, drunk driving deaths were reduced by 45 percent through tougher statutes, increased enforcement, and better public education. Those results were achieved without the administrative license suspension which is part of both bills. Because of our statutory system, we do not feel that administrative suspension would be an effective program for New Jersey although it has worked well in states with different systems.

Rather than requiring specific statutes to gain compliance, we would suggest that either sanction or incentive programs should be performance oriented. In that way states would be rewarded for achievements in reducing drunk driving not for intermediate measures like enacting legislation. The states would be able to use the countermeasures that would work best for them.

As both bills stand now, New Jersey would not only not qualify for an incentive, but would also be sanctioned because we lack administrative suspension. That would occur despite our proven accomplishments in reducing drunk driving.

I would be pleased to provide you with additional material regarding the New Jersey DWI control system. Our system should be viewed as an alternative approach for developing national policy.

Sincerely,

William T. Taylor
Director

WTT:WTH:sec

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ARTBA
American Road & Transportation Builders Association

July 6, 1988

Senator Quentin Burdick
Chairman, Senate Environment
and Public Works Committee
458 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Burdick,

The American Road and Transportation Builders Association would like to express our concerns about two measures currently under consideration in your committee. The legislation -- S. 2367 and S. 2523 -- hopes to encourage states to strengthen their existing law against drunk driving, through such steps as administrative license revocation or establishment of a per se Blood Alcohol Content level of 0.10.

The measure sponsored by Sen. Frank Lautenberg, S. 2367, would offer states financial incentives out of the Highway Trust Fund for enacting such measures. Sen. Harry Reid's bill, S. 2523, would impose federal-aid highway fund sanctions against states that did not comply with the requirements of S. 2523.

While ARTBA shares your concerns about the national problem of drunk driving, we believe both of these approaches are flawed. Withholding federal highway construction money will ultimately have an adverse impact on transportation safety, because it will prevent urgent highway and bridge needs from being adequately funded.

ARTBA supports the concept of financial incentives, but does not believe that such money should be taken out of the Highway Trust Fund. As you noted in your committee's June 29 hearing on these bills, such funding of alcohol traffic safety programs would have to be offset by reduced spending in the states' highway construction accounts.

We would welcome the opportunity to participate, should additional hearings on this subject be scheduled. Please contact me if I can be of assistance.

Sincerely,

Dick

Richard M. Harris
Vice President

525 School Street, S.W., Washington, D.C. 20024 • (202) 488-2722

NAGHSR
National Association
of Governors' Highway Safety Representatives

Statement of the
National Association of Governors'
Highway Safety Representatives

for the

Environment and Public Works Committee
United States Senate
June 29, 1988

The National Association of Governors' Highway Safety Representatives (NAGHSR) appreciates the opportunity to submit a statement to the Senate Environment and Public Works Committee on the important issues of drunk driving and federal alcohol incentive grants. The members of NAGHSR are responsible for administering a wide variety of state highway safety programs. The Association, which is affiliated with the National Governors' Association, is concerned about all aspects of highway safety, such as occupant protection, excessive speed, truck safety, and pedestrian safety. Drunk driving has been and will continue to be a major concern of the Association's members and a major focus of its activities.

Alcohol-Related Trends and Status of State Programs

Significant progress has been made in reducing the number of alcohol-related injuries and fatalities in this country. According to the recently-released Fatal Accident Reporting System (FARS) 1986 Annual Report, alcohol use by drivers involved in fatal accidents has steadily declined over the last 4 years. The proportion of drivers with any alcohol involvement (defined as a blood alcohol concentration of .01 or above) who were involved in a fatality decreased 13 percent from 1982 to 1986, as did the proportion of drivers involved in a fatality who were legally intoxicated (defined as a BAC of .10 or more). The FARS report further indicates that while the proportion of all drivers who were killed increased by 8 percent from 1982-86, the proportion of legally intoxicated drivers killed decreased by 11 percent. Additionally, the

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FARS data shows that the total number of alcohol-related fatalities in 1986 was 5 percent less than the total number in 1982, although 3 percent higher than the total number in 1985. A breakdown of the data further reveals that the proportion of intoxicated drivers involved in fatal crashes declined over the 4-year period for all age groups, but the most marked decline was for teenagers and senior citizens.

State governments have also made significant progress in developing programs to combat drunk driving. According to a recent report jointly prepared by NAGHSR and the National Association of State Alcohol and Drug Abuse Directors (NASADAD) which was funded by a project grant from the National Highway Traffic Safety Administration (NHTSA), the states have established more than 400 programs to prevent drinking and driving and more than 600 drunk driving intervention programs. (A copy of the report is herewith submitted for the record.)

Many of the programs are funded with Section 402 State and Community Highway Safety grants (23 U.S.C. 402), and many are innovative. California, for example, has implemented a prevention project known as Friday Night Live. It consists of a 15-minute, multi-image slide show aimed at teenagers, curriculum packets for teachers, and a variety of related activities (such as the formation of student action groups, the identification of a faculty advisor, and the provision of organizational and developmental assistance for the student action groups). To date, the program has been adopted by six counties. In Massachusetts, two innovative prevention programs have been developed. One--the Emergency Nurses CARE program--is a comprehensive alcohol awareness and educational program primarily created for junior and senior high school students which is operated by emergency department nurses. The second program--GUARDD--is oriented to college and university students and was initiated in response to Governor Dukakis' concern about alcohol-related accidents and fatalities. The program operates through the collective efforts of the Executive Office of Public Safety and the Governor's Highway Safety Bureau and provides technical assistance and resources to college communities across the state. Assuming that Congress does not reduce the level of 402 funding over the next few years, it can be anticipated that

the states will continue to refine existing impaired driver programs and initiate new, innovative programs similar to the ones just described.

Federal Role

Despite the progress that has been made over the last several years, alcohol-related injuries and fatalities continue to be a major problem for the country. Fatal motor vehicle crashes in which there was alcohol involvement constituted 52 percent of all the fatal crashes in 1986, according to the FARS report. In more than half of the single vehicle accidents in 1986, the driver was legally intoxicated, and about one-third of all multi-vehicle accidents involved a legally intoxicated driver. About 40 percent of all bicycle and pedestrian accidents in 1986 involved either a legally intoxicated driver or a non-occupant victim.

Additionally, public concern over drunk driving seems to have leveled off in the last few years. In the recent tragic school bus accident in Kentucky, for example, media attention was focused almost exclusively on the safety defects of the school bus. Relatively little attention was paid to the fact that the pickup truck driver had a BAC of .24--over twice the level for legal intoxication in most states--and that he was a repeat offender. The accident is likely to result in improvements in the enforcement of school bus safety regulations but is unlikely to provide the impetus for any new or additional federal or state drunk driving initiatives.

In light of these trends, therefore, we believe that alcohol-impaired driving continues to be a national concern and that the federal government must continue to play a leading role in addressing it. Recently, NHTSA issued a final rulemaking on the effectiveness of programs funded with Section 402 funds. In that rulemaking, NHTSA indicated that drunk driving was, according to its analysis, a national problem, that the alcohol countermeasures program was a very effective program, and that state-administered drunk driving programs should continue to be funded with 402 grant funds on a priority basis. NAGHSR strongly supported this position.

Clearly, Senator Lautenberg believes that the federal government must play a major role in combatting drunk driving, for that is the premise upon which his proposal, S.2367, is based. We applaud his vision and leadership and that of Senator Danforth on this issue.

Drunk Driving Enforcement Legislative Proposal

NAGHSR recently had a chance to assist in the development of S.2367 and to review the proposal in its final form. On balance, we find S.2367 to be a good bill both structurally and substantively. Structurally, the bill is straightforward and uncomplicated (which is a rarity these days for legislative initiatives!). Since it establishes an incentive grant program that is patterned very closely on the Section 408 Alcohol Safety Incentive Grant program (23 U.S.C. 408), it is an easy bill for state highway safety departments to comprehend.

The bill also is also strong substantively. In order to be eligible for a basic alcohol enforcement grant, a state must adopt legislation allowing administrative revocation or suspension of the licenses of persons arrested for alcohol-related driving violations prior to their conviction. A recent study by the Insurance Institute of Highway Safety (IIHS) found that these so-called "administrative per se" laws were more effective than either "per se" laws (those that define operating a vehicle at or above a certain blood alcohol concentration level as a crime) or laws that mandate jail or community service for first convictions of driving under the influence. In effect, S.2367 provides incentives to those states that chose to implement one of the most effective means of reducing alcohol-related fatal crashes.

Furthermore, S.2367 is intended to supplement--not duplicate--existing federally-funded drunk driving enforcement programs and to cajole states into strengthening programs that are already in place. Although the structure of the new alcohol enforcement grant program is similar to the 408 program, the eligibility criteria are not. In order to qualify for the new 409 grants, a state must satisfy eligibility criteria that are more stringent than those under the 408 program. Presumably, a state could qualify for both incentive grants if it satisfied both sets of eligibility criteria. A state that

qualified for both would be making a very concerted effort to address a troublesome and pervasive national problem.

One feature of the bill that we especially like is its reliance on incentives, rather than sanctions, to influence state government behavior. We believe that sanctioning Section 402 funds is a counterproductive approach to the drunk driving problem. 402 funds have, according to the NHTSA rulemaking on the 402 program, been very effectively used to combat the drunk driving problem in a number of ways such as: community-based alcohol prevention and education programs (such as Project Graduation and the Techniques for Effective Alcohol Management [TEAM] program); sobriety checkpoints and standardized sobriety testing; enforcement of state drunk driving laws; DWI training for law enforcement officials, prosecutors, and judges; alcohol treatment and rehabilitation programs (with financial support from other federal and state alcohol-related programs); and data collection and analysis programs which track the arrest records of drunk drivers. Sanctions would, therefore, compel state governments to improve their drunk driving enforcement efforts at the expense of their prevention, intervention, rehabilitation and treatment, and recordkeeping efforts.

Although NAGHSR believes that S.2367 has merit, there are three aspects of the bill that are of major concern. First, we feel that the legislation is not especially well-timed. In April, NHTSA issued a notice of proposed rulemaking on the implementation of the Section 408 Alcohol Incentive Grant program. The rulemaking would eliminate some of the unnecessary restrictions on state compliance with the 408 eligibility criteria without making any changes to the criteria themselves. Once the rule is finalized, more and more states are likely to qualify for 408 grants. We believe that it is preferable for NHTSA to first complete the regulatory process and then determine the impact the changed regulations have on state enforcement programs before any new alcohol enforcement incentive grant program is established.

Second, we are concerned that the 409 eligibility criteria are so stringent that relatively few states will be able to qualify. The eligibility criteria for the 408 program are not as stringent as those for the 409 program, yet

only seventeen states have qualified for the 408 funds to date. No new states have qualified since November 1985. We believe that some states may be able to satisfy the alcohol-related 409 eligibility criteria but may still be ineligible for 409 program funds because they are constitutionally prohibited from dedicating the revenues from fines and fees to a particular program (such as an alcohol enforcement program). NAGHSR recommends that the Department of Transportation research this issue and make a preliminary determination of the number of states which may qualify for the 409 grants. If the research indicates that relatively few states qualify, then some relaxation of the eligibility criteria may be in order.

Third, we have major concerns about the way the new 409 program is funded. If the program is funded out of the Highway Trust Fund, then it may divert available Trust Fund funds away from other highway safety programs such as the 402 and 403 (research and demonstration) programs. Funding for these programs has been relatively constant over the last few years and has not kept pace with increased highway safety needs. NAGHSR believes that funding for the existing highway safety programs should be increased--and not reduced--and, therefore, would be strongly opposed to this funding option. Furthermore, we question why Trust Funds should be diverted to a new alcohol enforcement grant program when there is a similar program (the 408 program) with large unobligated balances already in place. The unobligated 408 funds are obvious targets for Administration and Congressional budget cutters. It makes little sense to us to create a second program--in effect, a second target--in which large amounts of unobligated funds are likely to accrue.

Alternatively, a Highway Trust Fund-funded 409 program could divert revenue away from the federal-aid highway program whose funds are used for highway construction and rehabilitation purposes. The Governors, the state highway departments, and the highway construction industry would very likely be strongly opposed to this funding option, especially since recently released studies have found that the Nation's infrastructure is severely underfunded. The Senate Environment and Public Works Committee is keenly aware of the Nation's infrastructure problems and the massive infusion of funds (including Highway Trust Fund funds) that is needed to correct those problems.

The 409 program could be funded from general funds, but this option is fairly unlikely in light of the budgetary limitations of the FY89 budget summit agreement and the Gramm-Rudman-Hollings legislation. Under the terms of those agreements, a new initiative can be funded with general funds only if it is a declared national emergency and a waiver is obtained from budget ceilings or if there are offsetting budgetary reductions from programs within a related budget function. It would be extremely difficult to take offsetting budgetary reductions out of programs in function 400 (the federal budget for the Department of Transportation) since the funding for most of those programs has been steadily reduced over the last several years. This problem is compounded by the fact that there are legitimate unfunded highway, transit, aviation, rail, and water transportation needs and every program in function 400 has a vocal and organized constituency. Further, Congress rarely and reluctantly grants budgetary waivers and only does so for programs of utmost national priority and importance.

We can offer no easy solutions to this politically intractable funding problem. Rather, we urge you to explore each of these funding alternatives with interested and affected organizations (such as NAGHSR) and identify and move forward with the least objectionable one.

*****

NAGHSR appreciates the opportunity to submit its views to the Senate Environment and Public Works Committee and hopes its ideas and suggestions will be of use to the Committee in its deliberations.

REPORT OF THE NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS ON
S.2367: DRUNK DRIVING PREVENTION ACT OF 1988

I. INTRODUCTION: NACDL SUPPORTS A FAIR DDPA

The National Association of Criminal Defense Lawyers (NACDL) supports effective, realistic, and constitutional legislation aimed at the drunk driving problem in our country.

Toward this goal, we have reviewed S.2367, the proposed Drunk Driving Prevention Act of 1988 (DDPA), and have attempted to identify administrative and constitutional problems in it, and to propose modifications where appropriate.

II. IDENTIFICATION OF ADMINISTRATIVE AND UNCONSTITUTIONAL PROBLEMS AND REMEDIAL SUGGESTIONS.

At present DDPA's (e)(1)(A) provides in pertinent part:

> "when a law enforcement officer has probable cause ... to believe an individual has committed an alcohol-related ... offense, and such individual is determined on the basis of one or more chemical tests, to have been under the influence of alcohol while operating the motor vehicle concerned or refuses to submit to such test as proposed by the officer, such officer shall serve such individual with a notice of suspension or revocation, ... and shall take possession of the driver's license of such individual." (Emphasis added.)

1) **Identified Problem: DDPA's lack of time specificity for chemical testing equates to insufficient evidence as a matter of law and a denial of due process for either convicting the person of drunk driving and/or taking the person's license.**

The proposed language of the DDPA fails to specify the exact time that a chemical test is to be given. This is a critical failing because such a test is used to determine if the suspect was under the influence at the time of motor vehicle operation. Most of the present chemical testing by our law enforcement agencies occurs on a one test basis performed sometime after driving. In this regard, all scientific authorities agree that it is impossible to determine a person's urine, breath or blood alcohol concentration on the basis of a single chemical test given after the time of driving absent some other information demonstrating that the person was metabolically eliminating alcohol rather than absorbing alcohol. E.g., Mason and Dubowski, Breath-Alcohol Analysis: Uses, Methods, and Some Forensic Problems, 21 Forensic Sci. 9 (1976).

This inability to know if the suspect was absorbing or eliminating alcohol at the time of driving presents the constitutional question of whether one post-driving chemical test is, in and of itself, sufficient evidence to uphold either a drunk driving conviction or a suspension/revocation of a driver's license? The case law suggests that it is not, because one post-driving chemical test is insufficient under both the proof beyond a reasonable doubt standard, Jackson v. Virginia, 443 U.S. 307 (1979) and the civil preponderance of the evidence standard. E.g., State v. McCafferty, 748 S.W.2d 489, 491 (Tex.App., Houston [1st] 1988).

Moreover, it is NACDL's view that the case with which a fact finder can be mislead or confused by a single post-driving test result offends due process. Biologically, any single post-driving test result has three possible correlations to the suspect's alcohol concentration at the time of driving: 1) later test result is higher than alcohol concentration at time of driving; 2) later test result is same as alcohol concentration at time of driving; and 3) later test result is lower than alcohol concentration at time of driving Accordingly, a single test result, taken twenty minutes or more after the time of driving could erroneously result in the wrongful drunk driving conviction and suspension of a driver's license where, in reality, the person was not actually intoxicated at the time of driving. See, Fed.R.Ev. 403 (evidence is not relevant if it has a tendency to confuse or mislead the fact finder). See also, Appendix A: (diagram of three possible correlations). This due process question of elimination versus absorption is almost nonexistent if testing is done almost immediately (with 5 minutes) after driving at the scene of the traffic stop.

NACDL Remedial Suggestion:

Either require multiple chemical tests 20 minutes apart or require the test be performed on the scene of the traffic stop within 5 minutes after the stop.

NACDL Comment on "Multiple Testing":

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Assuming the accuracy and reliability of the particular chemical test utilized and that the individual being tested is of average metabolism, experts generally agree that a person's alcohol concentration at the time of driving can be accurately and reliably determined by three chemical tests performed subsequent to the time of driving, by extrapolation back of their results. Utilization of three tests, taken 15 to 20 minutes apart, is probably sufficient to determine whether the suspect's metabolism was in absorption or elimination.

NACDL Comment on "On the Scene Testing":

An "on-the-scene" chemical test requirement would eliminate the need for multiple testing and extrapolation calculations. An immediate test at the scene more accurately gauges the intoxication result in close proximity with the act of driving, the illegal act. Such testing methods are currently available and regularly utilized today in law enforcement.

2) Identified Problem: No Requirement for Chemical Test Specimen Preservation.

The proposed language of the DDPA fails to require law enforcement agencies to capture and preserve alcohol test specimens taken from citizens who are suspected intoxicated drivers for test result verification.

Remedial Suggestion:

Require chemical test specimen be preserved for verification.

NACDL Comment on Chemical Test Preservation:

At present, law enforcement utilizes three means of chemical testing for drunk driving: breath, blood and urine. Of necessity, for testing of blood and urine, specimens must be captured and preserved (at least until testing). Breath specimens, however, although capable of being inexpensively and conveniently captured and preserved, are not. Wilkinson, et al., The Trapping, Storing, and Subsequent Analysis of Ethanol in In-Vitro Samples Previously Analyzed by a Nondestructive Technique, 26 J.Forensic Sci. 671 (1981) and Dubowski and Essary, Alcohol Analysis of Stored Whole-Breath Samples by Automated Gas Chromatography, 6 J.Analytical Tox. 217 (1982).

In this regard, NACDL notes that most states have statutory provisions for a second independent chemical test by the accused after he/she has consented, and thereafter taken, the prosecution's test. E.g., Article 67011-5, sec. 3(d), Tex.Rev.Civ.St.Ann. However, these statutory rights often fail to provide remedies for their violation, State v. Crawford, 643 S.W.2d 178 (Tex.App. 1982) and most citizens are both unaware of the quickly dissipating right and ill equipped to arrange for the taking of a private specimen.

Moreover, it is important to note that a separate second independent test is not "a retesting" of the same specimen that forms the basis of the prosecution. Therefore, having a second independent and separate test result will not reduce litigation, but rather, may tend to increase it, and may actually permit the guilty to win dismissal of the prosecution.

See generally, State v. Peterson, 739 P.2d 958 (Mon. 1987); Moczek v. Bechtold, 363 S.E.2d 238 (W.Va. 1987); Montano v. Superior Ct. Pima Cty., 719 P.2d 271 (Calif., 1986); and, People v. Craun, 406 N.W.2d 884 (Mich.Ct.App. 1987).

Requiring the testing officer to capture and preserve alcohol concentration specimens would mean that a test result could be verified if either it or the accuracy or reliability of the testing process were called into question. Verification ability would reduce litigation and case court docket overcrowding. Indeed, the original prosecution test results could be reverified by either the prosecution or the defense and their respective findings would go far to resolve and/or eliminate contested issues of intoxication. Verification of an original prosecution test result also would increase the probability that the doubting party would quickly settle the case by agreement.

Law enforcement's current failure to preserve breath specimens is destruction of the evidence, resulting in an unconstitutional denial of due process, and the rights to confrontation, to gather exculpatory evidence and to a fair trial viewed by many as tantamount to a willful destruction of the evidence. See, Peterson, Moczek, Montano and Craun. See also, People v. Underwood, 396 N.W.2d 443 (Mich.App. 1986). This concern seems especially compelling in light of the fact that all states currently have at least a .10 percent BAC per se intoxication statute.

NACDL is aware of the Supreme Court decision of California v. Trombetta, 467 U.S. 479 (1984), wherein it was held that due process was not offended by the manner and methods of operation of the California breath test program wherein breath specimens were not preserved. However, we note that most other state breath test programs do not provide the same guarantees and safeguards that California did. For example, California and Texas may be compared and contrasted as follows:

California Alcohol Testing Program At Time of Trombetta:

1. did not preserve same breath as tested by Intoxilyzer;
2. breath samples were preserved by Field Crimper-Indium Tube Encapsulation Kit;
3. two samples were taken from each defendant and a test performed on each sample -- test results of the samples had to be within .02% of each other to be admissible;
4. Intoxilyzer calibrated weekly;
5. defendant allowed access to Intoxilyzer for inspection;
6. defendant allowed access to Intoxilyzer calibration results and breath samples used in the calibrations;
7. California prosecutions were based on "presumption" statute rather than "per se" statute; and,
8. defendant complained that destruction of breath sample thwarted his ability to impeach Intoxilyzer result and did not argue that destruction prevented him from presenting direct evidence of his innocence.

Texas Alcohol Breath Testing Today:

1. Intoxilyzer 4011-ASA is capable of preserving the exact same breath sample tested by the instrument;
2. only one breath sample of a defendant is taken;

3. intoxilyzer not required by statute or regulation to be calibrated on periodic basis;

4. the defendant, as per Texas regulation, is denied access to the Intoxilyzer to test its accuracy;

5. reference sample solutions are not preserved for defense inspection;

6. as per regulation, access to Intoxilyzer information or citizen training is precluded unless the individual is going to work for the State;

7. Texas DWI prosecutions are based on a "per se" statute and not a presumption statute; and,

8. it is the manufacturer's policy in Texas to not make any Intoxilyzer 4011-ASA sales or provide information to anyone in Texas except those connected with law enforcement;

Accordingly, NACDL believes that as a means to ensure a uniform due process to citizens of all states, and, in an effort to build public respect for the various states' chemical test programs, and, to build a strong confidence in the fairness of our judicial system, Congress should require chemical test specimen's be captured and preserved.

3) **Identified Problem: Chemical test refusals based on confusion caused by law enforcement officers advising suspects of their rights to remain silent, have counsel present, and to terminate the interview under Miranda v. Arizona and similar state grounded authorities, in close proximity to the test request, violates due process.**

Remedial Suggestion:

In jurisdictions "where applicable[1]," require law

[1]Some states do allow suspected drunk drivers to have advice of counsel before submitting to a chemical test request. See, Brosan v. Cochran, 516 A.2d 970 (Md. 1986); Kuntz v. State Hwy. Comm., 405 N.W.2d 285 (N.D. 1987) and State v. Spencer, 750 P.2d 147 (Or. 1988). In jurisdictions such as these, NACDL remedial suggestion for identified problem 3 would be illegal

enforcement officers who request citizen suspects to take a chemical test to affirmatively inform the person that his/her Miranda/state grounded rights are not applicable to a decision to submit, or not submit, to chemical testing.

NACDL Comment and Affirmative Law Enforcement Warnings:

Since the landmark decision by the United States Supreme Court in Miranda v. Arizona, 384 U.S. 436 (1966), law enforcement officers have had to inform said citizen/suspects that: 1) anything said can be used against them; 2) they have a right to have counsel present; 3) if they can't afford counsel, that one will be appointed for them by the court; and 4) they can terminate the law enforcement interview at any time. These fair warnings must be given if the government is to use self-incriminating remarks of the citizen/suspect after he is in custody. Following Miranda, many state legislatures passed law requiring similar warnings be given persons arrested in their jurisdictions, e.g., Article 38.22, Tex.C.Cr.Pro. See generally, South Dakota v. Neville, 459 U.S. 553 (chemical test result is not testimonial in nature and therefore is not protected by the privilege against compulsory self-incrimination).

However, it is well settled that the warnings are not applicable to the decision to submit to chemical testing.

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and therefore not applicable.

Since drunk driving in a majority of our states is a criminal offense, law enforcement officers who have stopped and arrested a person for driving while intoxicated, routinely inform those suspects of their Miranda/state grounded rights.

Such warnings generally precede the officer's request that the citizen/suspect submit to chemical testing.

However, in most cases, the officer does not inform the person that the Miranda/state grounded rights are not applicable to the decision to submit to chemical testing. As a result, suspects are often confused into believing that the rights do apply, and that it is an appropriate exercise of those rights to decline to submit to chemical testing. See, The High Court vs. the High Driver: A Short Course in Logic, Vol. XXI, CrL.Bull. 37 (Jan.-Feb. 1985).

Numerous courts have held that this confusion, or inadvertent or negligent misleading, rises to the level of a due process violation. The body of law stemming from these cases is sometimes called the Confusion Doctrine/CoMingled Miranda Doctrine/Mixed Miranda Breath Test Request Doctrine. See, State v. McCambridge, 712 S.W.2d 499, 506, n.17 (Tex.Cr.App. 1986); Rust v. California Dept. of Motor Vehicles, 73 Cal.Rptr. 366 (Cal.Ct.App. -4th Dis., Div. 1, 1969); Wiseman v. Sullivan, 211 N.W.2d 906 (Neb. 1974); Swan v. Louisiana Dept. of Pub. Safety, 311 So.2d 498 (La.Ct.App. -4th Cir. 1975); State v. Severino, 537 P.2d 1187 (Ha. 1975); and, Lawton v. Ohio Bureau of Motor Vehicles, 386 N.E.2d 267 (Ohio Ct.App. 1978).

4) **Identified Problem: Immediate taking possession of the person's driver's license upon refusal or upon a test result indicating drunk driving violates due process.**

NACDL Remedial Suggestion: Do not require the immediate taking of a person's driver's license upon refusal or on a chemical test determination that a drunk driving offense has been committed. Rather, provide for the installment of the option to an electronic alcohol ignition interlock device in the suspect's vehicle pending appropriate due process proceedings for license suspension or revocation.

Such a device, which precludes vehicle ignition where alcohol is sensed on the driver's breath, is specifically coded to the suspect's breath and therefore cannot be fooled by the clean breath of another.

NACDL Comment on Immediate Taking of License Generally: Due process protection is applicable to the deprivation of a person's driver's license by a state. Dixon v. Love, 431 U.S. 105 (1977) and Mackey v. Montrym, 443 U.S. 1 (1979). See also, Mathews v. Eldridge, 424 U.S. 319 (1976). Clearly, a citizen/suspect has a property interest in the retention of his/her driver's license.

NACDL Comment on Refusal Taking:

The immediate taking of a person's license for a refusal to be chemically tested because he relied on his rights, absent

affirmative warnings that Miranda/state grounded rights were not applicable constitutes an illegal taking and runs contrary to due process. See, supra, NACDL Comment on Affirmative Law Enforcement Warnings. Further, such a taking in states that do afford applicability of similar rights would be patently offensive to state law. See, footnote 1, supra.

NACDL Comment on Chemical Test Determination Taking:

The immediate taking of a person's license for having a particular level of alcohol concentration also runs contrary to due process.

As discussed earlier, a single post-driving chemical test is an inaccurate and unreliable means of determining what a person's alcohol concentration is at the time of actual driving. See Smith, Science, The Intoxilyzer, and Texas Breath Alcohol Testing, Vol. II, TEXAS DRUNK DRIVING LAW, VII-37 (1987).

Moreover, with specific focus on breath and urine testing, the authorities generally agree that these type tests are premised upon the "exactly average" biological person. Here, there is unanimous agreement again that all persons are not "exactly average" in their biological persons and that breath and urine tests can, and will, over report (i.e., indicate an erroneous high result) a particular person's actual blood alcohol concentration. This over reporting can, and does, result in the prosecution and conviction of innocent persons.

In conclusion, NACDL believes that absent a requirement for an "on location of the traffic stop test," a driver's license should not be taken where a suspect registered a chemical test result indicating drunk driving from a single non-blood test taken after the time of driving.

NACDL Comment on Electronic Alcohol Ignition Interlock Installation Option:

It is an unfortunate reality that the taking of a suspect's driver's license through a suspension or revocation is of limited effectiveness in preventing that person from further driving an automobile--sober or intoxicated--during the period of the suspension/revocation. People drive out of necessity, and therefore, the taking of a driver's license is often inadequate to ensure sure that the affected person will not drink and drive.

However, the installation of an electronic automobile alcohol/sensor ignition interlocking device, which detects alcohol on a driver's breath, does far more effectively ensure that the drinking person does not drive. (See, Appendix B: Materials on Interlock Devices.)

III. PROCEDURAL PROTECTIONS:

> "such suspension or revocation shall take effect at the end of a period of not more than fifteen days immediately after the day on which the driver first received notice of the suspension or revocation."

5) Identified Problem: 15 days is an insufficient period to have a realistic, workable and fair

administrative hearing on the appropriateness of a driver's license suspension/revocation.

NACDL Remedial Suggestion:

Require the hearing to take place within 45 days of first notice and require it to be in the same case where the criminal drunk driving prosecution has been initiated, i.e., it should be a judicial hearing which is assigned to the same court where the drunk driving prosecution is pending.

NACDL Comment on Hearing Within 45 Days:

The DDPA as presently written condones licenses suspensions for two separate and distinct reasons. First, suspension occurs where there is a chemical test refusal. Second, suspension occurs when person is over the legal chemical test limit, and therefore, is considered drunk.

In both instances, the DDPA mandates the requesting officer to immediately take the suspect's license. This taking is ostensibly not a suspension or revocation -- actions which, according to the Act, occur at a subsequent hearing no more than 15 days later. The "immediate taking" unconstitutionally deprives the suspect of any kind of prior due process hearing. See, Bell v. Burson, 402 U.S. at 539.

The United States Supreme Court has held that interests protected as property, i.e., a driver's license, are varied and are often intangible. Logan v. Zimmermann Bruch Company, 455 U.S. 422, 430 (1982). These rights relate to the "domain of social and economic fact." Id. at 430, citing National Mutual

Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582, 646 (1949) (Frankfurter, J., dissenting). "Property interests ... are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law ... that secure certain benefits and that support claims of entitlement to these benefits." Board of Regents v. Roth, 408 U.S. 564, 577 (1972).

With specific reference to driver's license taking under the proposed DDPA, one must remember that due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. Armstrong v. Manzo, 380 U.S. 545 (1965); Barry v. Barchi, 443 U.S. 55, 66 (1979). Thus, the constitutional guarantee of procedural due process has always been understood to embody not only the requirement of a meaningful opportunity to be heard before the state acts to deprive a person of his or her property, i.e., a driver's license, but also a requirement that the hearing be held at a meaningful time, i.e., before driving privileges have been taken away. See, Mullane v. Central Hanover Trust Company, 339 U.S. 306, 313 (1950); Fuentez v. Shevin, 407 U.S. 67 (1972); Bell v. Burson, 402 U.S. 535 (1971); Goldberg v. Kelley, 397 U.S. 254 (1970).

NACDL is concerned that a 15-day time period may be unrealistic, especially in a large metropolitan community, for the hearing officials, the prosecuting officials and the

suspect to prepare for a final hearing on license revocation or suspension.

6) Identified Problem: **There is no specification of what "minimal" due process guidelines will be for suspension/revocation hearings. The present DDPA due process guideline is extremely vague and subjects citizens of different states to different levels of due process or possibly a lack of due process.**

NACDL Remedial Suggestion:

NACDL believes that it is critical that specific minimal due process requirements be mandated by the DDPA. The specific requirements are noted below.

NACDL believes that the Act should provide specific direction as to what kind of hearing is necessary, and, what kind of due process guarantees are necessary. Without such direction, citizens of the separate states will be treated unequally, and thus, unfairly.

Most importantly NACDL suggests that Congress require these suspension/revocation hearings be judicial in nature. Presently, most such hearings are administrative in nature, but are subject to trial de novo appeals to a judicial court. Thus, since the hearing is likely to wind up before a judicial official anyway, it should begin there in the first place. Among the advantages of a judicial forum:

First, be it a "refusal" or an "over the limit suspension/revocation," one must recognize that parallel criminal proceedings in a judicial forum have already been set in motion, when the suspect was arrested for drunk driving.

Accordingly, his case is already bound for a judicial forum with a neutral and detached judge as the finder of fact and law. It makes no sense to expend duplicate money and duplicate governmental resources to create a separate administrative hearing wherein the same issues, evidence and parties are already involved in a judicial setting.

Second, a full and fair hearing is more likely before a judicial officer than before an administrative officer. In light of the substantial punitive nature and purpose of the sanction of license revocation or suspension, adjudication by an employee of the executive branch offers inadequate assurance of a neutral and detached decision.

Third, having a judicial hearing in the same court that handles the drunk driving prosecution ensures that indigent suspects will be treated equally and fairly by virtue of the availability of appointed counsel. In fact, they will have the same appointed counsel as they have in the criminal drunk driving prosecution and at no extra cost.

NACDL Comment on Additional Minimal Due Process Specific Requirements:

NACDL suggests the following requirements offer the minimum due process guarantees of fairness to a driver's license suspension/revocation hearing:

1) The State must provide oral and written pre-chemical test admonitions that Miranda/State grounded rights, where not applicable, do not apply to the person's chemical test decision. Moreover, the admonitions must inform the arrested person of the sanctions and penalties for both chemical test refusal and for

having a chemical test result which is indicative of drunk driving. This latter requirement also includes the sanctions and penalties for being convicted of drunk driving.

2) The State must give prior notice of the intended suspension/revocation in writing, and such should be presented in person or by registered mail.

3) The suspect must be given reasonable time to prepare a defense for the hearing.

4) The arresting officer must be required to initiate the suspension/revocation process by executing a sworn affidavit, based on personal knowledge, which contains sufficient facts to justify a suspension/revocation.

5) The prosecution must have the burden of proof by a preponderance of the evidence.

6) The hearing must be a judicial one wherein the regular rules of evidence and procedure for that court govern.

7) The chemical test utilized for determining if a person is intoxicated be one which is accepted as accurate and reliable by the scientific community.

8) The suspect must be given supervised and reasonable access to the chemical testing records, logs, manuals, the instruments themselves, preserved test specimens, etc.

9) The State must be required to preserve chemical test specimens for a period of six months.

10) The State must be required to perform either chemical testing on the traffic stop scene or three chemical test specimens taken twenty minutes apart.

11) The suspect must have the option of choosing the type chemical test he/she will take where the State's implied consent statute provides several methods of testing, i.e., breath, blood or urine.

12) The suspect must have the option of choosing the installation of an automobile ignition alcohol detector as opposed to having her/his license suspended. Said installation period would be the same period of time as the suspension/revocation.

IV. OTHER NACDL SUGGESTIONS FOR ENACTING AN EFFECTIVE DDPA.

1) Require State law enforcement agencies to perform "on the scene" videotaping of citizen/suspects.

NACDL believes that videotape evidence, such as audio and video recordings, made of a drunk driving suspect at the scene of the traffic stop offers the best evidence on the issue of whether or not the person's normal mental and physical faculties were impaired while driving. The videotape film, and the audio recording thereon, freezes for all time the mental and physical characteristics of the suspected drunk driver. Such electronic recordings are the best evidence of intoxication because, through film, the judicial forum actually sees and hears for itself the same evidence the arresting officer saw and heard and the judge need not rely solely upon the opinion of the arresting officer. Accordingly, the DDPA should require states that receive grant money to videotape and audio tape drunk driving suspects at the scene of their traffic stop. Clearly, with today's technology, such a requirement is both convenient and inexpensive.

2) Congress should require that alcohol beverage containers carry a printed warning which says "driving after consuming alcoholic beverages is dangerous and increases the risk of injury and death to you and others. Conviction of drunk driving can result in jail, fines and loss of your driver's license."

NACDL believes that the public can benefit from the above-referenced warning as it has benefitted from similar warnings that now appear on tobacco products and some artificial sweetener products. Indeed, it may be that the warning on the beverage bottle or can will act as the real

deterrent to prevent the citizen from consuming that last drink.[2] Accordingly, NACDL urges Congress to enact legislation requiring the placement of said warnings on alcohol containers.

V. CONCLUSION

NACDL'S members, like all concerned citizens, want to protect our families, friends and fellow citizens from the dangers of drunk driving. Moreover, NACDL's members also believe that we must protect the constitutional rights, privileges and protections of all persons concerned: the innocent and the guilty. We hope that this report will be helpful in the consideration of federal drunk driving legislation. Questions or requests for additional information should be addressed to the contact listed below.

Contact:

J. Gary Trichter
55 Waugh Drive, Suite 900
Houston, Texas 77007
(713) 868-1010

dgt/pronacdl

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[2]Although not directly related to drunk driving NACDL also notes in passing that the State should be required to enact legislation that requires motorcycle drivers and passengers to wear protective helmets.

II

100TH CONGRESS
2D SESSION

S. 2367

To promote highway traffic safety by encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 11 (legislative day, MAY 9), 1988

Mr. LAUTENBERG (for himself, Mr. DANFORTH, Mr. BENTSEN, Mr. PELL, Mr. GORE, Mr. WEICKER, and Mr. CHAFEE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To promote highway traffic safety by encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Drunk Driving Prevention Act of 1988".

SEC. 2. (a) Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§ 409. Drunk driving enforcement programs

"(a) Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement drunk driving enforcement programs which include measures, described in this section, to improve the effectiveness of the enforcement of laws to prevent drunk driving. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for drunk driving enforcement programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

"(c) No State may receive grants under this section in more than three fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 per centum of the cost of implementing and enforcing in such fiscal year the drunk driving enforcement program adopted by the State pursuant to subsection (a) of this section;

"(2) in the second fiscal year the State receives a grant under this section, 50 per centum of the cost of

implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 per centum of the cost of implementing and enforcing in such fiscal year such program.

"(d)(1) Subject to subsection (c) of this section, the amount of a basic grant made under this section for any fiscal year by any State which is eligible for such a grant under subsection (e)(1) of this section shall equal 30 per centum of the amount apportioned to such State for fiscal year 1989 under section 402 of this title.

"(2) Subject to subsection (c) of this section, the amount of a supplemental grant made under this section for any fiscal year by any State which is eligible for such a grant under subsection (e)(2) of this section shall not exceed 20 per centum of the amount apportioned to such State for fiscal year 1989 under section 402 of this title. Such supplemental grant shall be in addition to any basic grant received by such State.

"(e) For purposes of this section, a State is eligible for a basic grant if such State provides for—

"(1) an expedited driver's license suspension or revocation system which requires that—

"(A) when a law enforcement officer has probable cause under State law to believe an individual has committed an alcohol-related traffic offense, and such individual is determined, on the basis of one or more chemical tests, to have been under the influence of alcohol while operating the motor vehicle concerned or refuses to submit to such a test as proposed by the officer, such officer shall serve such individual with a notice of suspension or revocation, which shall provide information on the administrative procedures by which a State may suspend or revoke a license for drunk driving and specify any rights of the driver in connection with such procedures, and shall take possession of the driver's license of such individual;

"(B) after serving such notice and taking possession of such driver's license, the law enforcement officer shall immediately report to the State entity responsible for administering driver's licenses all information relevant to the enforcement action involved;

"(C) upon receipt of the report of the law enforcement officer, the State entity responsible for administering driver's licenses shall, where an individual is determined on the basis of one or

more chemical tests to have been intoxicated while operating a motor vehicle or is determined to have refused to submit to such a test as proposed by the officer, (i) suspend the driver's license of such individual for a period of not less than ninety days if such individual is a first offender and (ii) suspend the driver's license of such individual for a period of not less than one year, or revoke such license, if such individual is a repeat offender;

"(D) such suspension or revocation shall take effect at the end of a period of not more than fifteen days immediately after the day on which the driver first received notice of the suspension or revocation; and

"(E) the determination as required by subpararaph (C) of this paragraph shall be in accordance with a process established by the State, under guidelines established by the Secretary to ensure due process of law, (i) for such administrative determinations and (ii) for reviewing such determinations, upon request by the affected individual within the period specified in subparagraph (D) of this paragraph; and

"(2) a self-sustaining drunk driving enforcement program under which the fines or surcharges collected from individuals convicted of driving a motor vehicle while under the influence of alcohol are returned to those communities which have comprehensive programs for the prevention of drunk driving.

"(f) For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition such State provides for—

"(1) mandatory blood alcohol content testing whenever a law enforcement officer has probable cause under State law to believe that a driver of motor vehicle involved in a collision resulting in the loss of human life or, as determined by the Secretary, serious bodily injury, has committed an alcohol-related traffic offense; or

"(2) an effective system for preventing drivers under age twenty-one from obtaining alcoholic beverages, which may include the issuance of driver's licenses to individuals under age twenty-one that are easily distinguishable in appearance from driver's licenses issued to individuals twenty-one years of age or older.

"(g) There are authorized to be appropriated to carry out this section, out of the Highway Trust Fund,

$25,000,000 for the fiscal year ending September 30, 1989, and $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1990, and September 30, 1991. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs.".

(b) The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end the following:

"409. Drunk driving enforcement programs.".

SEC. 3. (a) Not later than thirty days after the date of enactment of this Act, the Secretary of Trasnportation shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study to determine the blood alcohol concentration level at or above which an individual when operating a motor vehicle is deemed to be driving while under the influence of alcohol.

(b) In entering into any arrangement with the National Academy of Sciences for conducting the study under this section, the Secretary shall request the National Academy of Sciences to submit, not later than one year after the date of

enactment of this Act, to the Secretary a report on the results of such study. Upon its receipt, the Secretary shall immediately transmit the report to the Congress.

SEC. 4. The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 409 of title 23, United States Code, not later than December 1, 1988. The final regulations for such implementation shall be issued, published in the Federal Register, and transmitted to Congress before March 1, 1989.

II

100TH CONGRESS
2D SESSION

S. 2523

To amend title 23, United States Code, to require States to promptly suspend or revoke the license of a driver found to be driving under the influence of alcohol and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16 (legislative day, JUNE 13), 1988

Mr. REID (for himself and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To amend title 23, United States Code, to require States to promptly suspend or revoke the license of a driver found to be driving under the influence of alcohol and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

may suspend or revoke a license for drunk driving and specifies any rights of the driver in connection with such procedures and such officer take possession of the driver's license of such individual;

"(B) after serving such notice and taking possession of such driver's license, the law enforcement officer immediately report to the State entity responsible for administering driver's licenses all information relevant to the enforcement action involved;

"(C) upon receipt of the report of the law enforcement officer, the State entity responsible for administering driver's licenses, if an individual is determined on the basis of one or more chemical tests to have been intoxicated while operating a motor vehicle or is determined to have refused to submit to such a test as proposed by the officer—

"(i) suspend the driver's license of such individual for a period of not less than ninety days if such individual is a first offender, and

"(ii) suspend the driver's license of such individual for a period of not less than one year, or revoke such license, if such individual is a repeat offender;

State of the license plates for, any motor vehicle owned by an individual who—

"(A) has been convicted of more than one alcohol-related traffic offense, or

"(B) has been convicted of driving while the driver's license of such individual is suspended or revoked by reason of a conviction for an alcohol-related traffic offense; or

"(4) the driving of a motor vehicle on a public highway, or the right-of-way of a public highway, in such State by a person with a blood alcohol concentration of 0.10 percent or greater is not a violation of the criminal laws of such State.

"(b)(1)(A) Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 1992, shall remain available for apportionment to such State as follows:

"(i) If such funds would have been apportioned under section 104(b)(5)(A) but for this section, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

"(ii) If such funds would have been apportioned under section 104(b)(5)(B) but for this section, such funds shall remain available until the end of the second